TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~246.~~ 35

MARY C. SANGER, PLAINTIFF IN ERROR,

vs.

CLARKE W. UPTON, ASSIGNEE IN BANKRUPTCY OF THE GREAT WESTERN INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 14, 1873.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge, on Tuesday, the ninth day of September, in the July term of said court, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-eighth year.

WILLIAM H. BRADLEY,
Clerk.

MARY C. SANGER, PLAINTIFF IN ERROR,
vs.
CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt, defendant in error.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered that on the fifth day of May, A. D. 1873 Mary C. Sanger, plaintiff in error in said entitled suit, by her attorneys, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a transcript of a record from the district court of the United States for the northern district of Illinois in said cause; which said transcript from said district court, together with the writ of error, is in words and figures following, to wit:

3 District court of the United States for the northern district of Illinois.

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt,
vs.
MARY C. SANGER. No. 3419.

TRANSCRIPT OF RECORD.

4 Pleas in the district court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. James C. Hopkins, judge, on Wednesday, the fifth day of February, in the year of our Lord one thousand eight hundred and seventy-three, in the December term of said court, A. D. 1872, and of our Independence the ninety-seventh year.

WILLIAM H. BRADLEY,
Clerk.

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt,
vs.
MARY SANGER. Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-fourth day of August, A. D. eighteen hundred and seventy-two, Clark W. Upton, assignee in bank-

For that whereas the said bankrupt, the Great Western Insurance Company, being a corporation created and existing under and in pursuance of an act of the legislature of the State of Illinois, entitled "An act to incorporate the Great Western Insurance Company of Chicago, Illinois," approved February 4, A. D. 1857, for the purpose of insurance and the taking of risks on all kinds of property, both marine and fire, and deriving profits from the said business of insurance to its stockholders; having a capital stock designated by the express terms of the said act of incorporation, and allowed as the sum of five hundred thousand dollars.

And whereas afterwards, to wit, on the 25th day of June, A. D. 1870, under and in pursuance of the provisions of the laws of the State of Illinois, the charter of the said company was by the stockholders and directors thereof amended, so that its capital stock might be increased to five millions of dollars.

That said capital stock was divided into shares of one hundred dollars each, the subscription and payment for which stock constituted its only fund and means of paying the losses it might meet in the prosecution of its business. Five per cent. of its subscribed capital stock was required to be paid as a company fund in cash, and the balance to be secured to be paid on demand or otherwise, by approved judgment notes, by hypothecated stock mortgages on real estate in Cook County, or other satisfactory security. That by its charter said corporation was
8 empowered to do any and all acts consistent with the constitution and laws of the State of Illinois.

That by the laws of the State of Illinois in such case made, it was provided that the corporators of any insurance company organized in the State of Illinois should severally be liable for all debts and responsibilities of such company, to the amount of stock by him or them subscribed, until the whole amount of the capital stock of such company shall have been fully paid in, and a certificate thereof recorded.

And whereas the said defendant heretofore, to wit, on the 10th day of March, A. D. 1870, at Chicago, in the northern district of Illinois, subscribed for and took, to wit, one hundred shares of the capital stock of the said Great Western Insurance Company, and thereby became the owner and holder thereof, and then and there agreed and became bound and obligated thereby to pay the said Great Western Insurance Company twenty dollars per share of one hundred dollars each, in installments, to wit, twenty-five per cent. (of the said twenty dollars) on receipt of the stock certificate, twenty-five per cent. in three months, twenty-five per cent. in six months, and twenty-five per cent. in nine months from the date thereof; the balance, eighty per cent., to stand and remain on subscription without interest, which said original subscription, so executed, has been accidentally destroyed by fire.

And whereas, to wit, on the 10th day of March, A. D. 1870, the said Great Western Insurance Company did, in accordance with the terms and conditions of the subscription aforesaid, make, execute, and deliver to the said defendant a certificate of, to wit, one hundred shares of its capital stock so subscribed for and agreed to be taken by said defendant, as aforesaid, which said certificate was taken and accepted by the said defendant, whereby the said defendant became and was a stockholder in said company to the extent of, to wit, one hundred shares of its capital stock, apportioned and set apart to and vested in him, as aforesaid, whereby the said defendant became and ever since has continued to be a stockholder in said Great Western Insurance Company, exercising all the rights, powers, and privileges of a stockholder therein,

by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to said Great
9 Western Insurance Company the sum of one hundred dollars upon each share of the capital stock of the said Great Western Insurance Company so taken, held and owned by him, as aforesaid.

And whereas afterwards, to wit, on the 3d day of January, A. D. 1872, to wit, at Chicago, in the northern district of Illinois, in consequence of great losses which said insurance company had, prior to that time, sustained by fire in the said city of Chicago aforesaid, and elsewhere, whereby its entire cash capital and assets were exhausted, by reason of its liability to its policy-holders, and to an amount greatly exceeding all its cash funds and means of payment, and in an amount largely in excess of all sums that can be collected on its entire unpaid capital stock and assets, which said liabilities are still outstanding, due and unpaid, and for the purpose of providing means of payment thereof to said insurance company by a vote of its directors and stockholders, duly convened for that purpose, to wit, on the day and year aforesaid, to wit, at Chicago, in the northern district of Illinois, aforesaid, duly assessed, called in, and ordered paid, to wit, twenty per cent. of the then remaining unpaid eighty per cent. on each share of stock, to wit, twenty dollars on each share thereof so held by its stockholders on said unpaid capital stock, of which the said stockholders then and there had notice; that only a small amount, to wit, twenty per cent., had been paid on the stock subscribed for and held by the said defendant, as aforesaid, and which said sum so assessed, called in, and ordered paid, is still due and owing from said defendant.

And whereas afterwards, in consequence of its losses so sustained, as aforesaid, and the delinquencies of its stockholders in the payment of the calls so made upon them, as aforesaid, the said Great Western Insurance Company became unable to meet its liabilities, and upon a petition filed in bankruptcy on, to wit, the 17th day of January, A. D. 1872, by Richard M. Hooley, against the said Great Western Insurance Company, the said insurance company was afterwards, to wit, on the sixth day of February, A. D. 1872, adjudicated a bankrupt by the district court of the United States for the northern district of Illinois, in pursuance of the act of Congress of the United States in such case made and provided, as by the records thereof, now remaining in said court, will more fully and at large appear.

10 And whereas afterwards, to wit, on the 11th day of April, A. D. 1872, the said Clark W. Upton was duly appointed assignee in bankruptcy of the estate of the said Great Western Insurance Company, in conformity with law, and a deed of assignment of all the estate, effects and property of the said Great Western Insurance Company, a bankrupt, as aforesaid, was executed in due form of law, under the hand and seal of Homer N. Hibbard, esq., register in bankruptcy for the congressional district of the State of Illinois, and delivered to the said Clark W. Upton, so appointed assignee as aforesaid, thereby vesting in the said assignee the estate, property and effects of the said bankrupt.

And whereas this honorable court, sitting in bankruptcy in and for the northern district of Illinois, on the application and petition of the said Clark W. Upton, assignee of the estate of said bankrupt as aforesaid, to wit, on the 5th day of July, A. D. 1872, made and entered of record, in this honorable court, a call upon the stockholders of the said brankrupt for the full payment of the entire unpaid capital stock of the aid bankrupt, severally held by them, and each of them, and ordered

the same paid, as hereinafter set forth, which said call and order of payment was of the following tenor and effect, to wit:

IN THE MATTER OF THE GREAT WESTERN INSURANCE Company, bankrupt. } In bankruptcy.

And now on this day comes C. W. Upton, assignee of the estate of said bankrupt, and makes application to this court, showing that a large amount of the capital stock of the said bankrupt remains unpaid in part; that the whole amount of such capital stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt; and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount unpaid on the capital stock of the said bankrupt be paid to said assignee on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, and in default thereof that said assignee proceed to collect the same. It is further ordered that notice of this call be given to the stockholders of said bankrupt so far as
11 known, without unreasonable delay, by publication or otherwise.

And the plaintiff, assignee as aforesaid, avers that notice in accordance with the terms and conditions of said order of this honorable court was duly given to the stockholders of said bankrupt as therein and thereby required.

That a small amount, to wit, twenty per cent., only has been paid upon each of the said shares of stock in the bankrupt company, which are now held and owned by the said defendant. And whereas, the said company did publish and advertise the entire amount unpaid upon its capital stock issued, including the amount unpaid upon the stock by the defendant held as aforesaid, as a part of its resources wherewith to pay losses and protect its creditors, and did procure the insurance, the losses upon which are now due and unpaid, and for the indebtedness upon which losses render it now insolvent, upon such publication and advertisement, and by reason of the facts aforesaid, the said defendant is now indebted thereon to the plaintiff as assignee as aforesaid for the remaining unpaid portion, to wit, eighty per cent. thereof, to wit, for the sum of ten thousand dollars.

Yet the said defendant, although often requested, has not paid the said several sums of money or either or any part thereof, but has wholly neglected and refused so to do.

And whereas, also, the said defendant heretofore, to wit, on the eleventh day of April, A. D. 1872, to wit, at Chicago, in the northern district of Illinois, being the holder and owner of, to wit, one hundred other shares of one hundred dollars each of the capital stock of the Great Western Insurance Company aforesaid, upon which had been paid a small sum, to wit, twenty per cent. thereof, or twenty dollars on each share thereof, the residue and balance due thereon, to wit, being eighty per cent. thereof, to wit, eighty dollars on each share thereof, being subject to assessment on call of the said company, its board of directors, agents or creditors, whenever thereafterwards the same should be required to pay the debts or liabilities of the said Great Western Insurance Company, in the due course of its business as an insurer against fire or marine losses, or both.

And whereas the said Great Western Insurance Company, in con-
12 sequence of losses sustained by its policy-holders, for which it became and was liable to pay, and indemnify against, to an amount greatly exceeding all its assets, and more than can be collected upon all

of its said assets and unpaid capital stock, and which said liabilities are now subsisting and wholly unpaid, all of which the defendant had notice, and in consequence of the non-payment thereof, the said Great Western Insurance Company has been by the judgment and order of the district court of the United States for the northern district of Illinois, sitting in bankruptcy, on petition duly filed in said court for that purpose by its creditors, duly adjudged a bankrupt, in pursuance of the laws of the United States in that behalf enacted and provided, of which defendant had notice. And whereas upon such adjudication the said Clark W. Upton was appointed the assignee of the estate of the said bankrupt, under and in pursuance of the bankrupt laws of the United States in that behalf enacted, and as such assignee now holds the estate of said bankrupt, in pursuance of said bankrupt law as aforesaid.

And whereas the said United States district court, sitting in bankruptcy, on petition duly filed for that purpose, did order and adjudge, among other things, that the whole amount of the unpaid capital stock of said insurance company, bankrupt, will be required to be paid in order to meet its liabilities and demands proven in bankruptcy against said bankrupt, and did further order that the entire amount unpaid on the capital stock of the said bankrupt insurance company be paid by its stockholders to the said plaintiff as assignee as aforesaid, on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, of which said defendant then and there had notice, as by the records and proceedings of the said court will more fully and at large appear, which said time has long since elapsed.

By means whereof, and by force of the statutes in such case made and provided, the said defendant became and is liable to pay to said plaintiff a large sum of money, to wit, eighty per cent. or eighty dollars on each share of stock so held and owned by him as aforesaid, to wit, ten thousand dollars, and which, though often requested, said defendant wholly neglects and refuses to pay, or any part thereof.

13 And whereas, also, the said defendant heretofore, to wit, on the eleventh day of April, A. D. 1872, at Chicago, in the northern district of Illinois aforesaid, became and was indebted to the Great Western Insurance Company, which said insurance company has been duly adjudged a bankrupt in pursuance of law, for, to wit, one hundred shares of the capital stock of said company of one hundred dollars each, before that time bargained, sold, set apart, and transferred to him, said defendant, by the said insurance company, on the books of said company, at his, said defendant's, special instance and request, the certificates whereof were delivered to said defendant, and being so indebted to the said defendant in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at Chicago aforesaid, undertook, and then and there faithfully promised the said plaintiff as the assignee in bankruptcy of the estate of the said Great Western Insurance Company, bankrupt as aforesaid, duly appointed according to law, to pay him therefor when he, the said defendant, should be thereunto afterwards requested.

And also for that, whereas, heretofore, to wit, at Chicago, in the northern district of Illinois on, to wit, the eleventh day of April, A. D. 1872, the said defendant, at his special instance and request, became, and was the legal owner of certain, to wit, one hundred other shares of the stock of the said Great Western Insurance Company, of the par value of one hundred dollars each, upon which said stock there was unpaid and uncalled for at the said time when the said defendant became the said legal owner thereof, to wit, the sum of eighty dollars per share, the payment of which said sum of eighty dollars per share always theretofore

had been, and at the time the said defendant became the legal owner thereof as aforesaid, was unsecured to said company save by the obligation of whoever might be the legal owner thereof to pay the same, and which said sum of eighty dollars per share he, the said defendant, upon becoming the legal owner of said stock, in consideration of the rights and privileges thereby by him, said defendant, acquired, promised, and agreed to and with said company, that he, the said defendant, would pay to said company upon each and every of said shares so by him owned as aforesaid, whenever he, the said defendant, should be legally and properly called upon to so do.

And the plaintiff saith that said defendant hath often been legally and properly called upon to pay the said sum of eighty dollars per
14 share upon each of said, to wit, one hundred shares so by him owned as aforesaid, to wit, the sum of ten thousand dollars, and that he, said defendant, was, at the time of so being called upon to pay said sum, the legal owner of, to wit, said one hundred shares of said stock; nevertheless he, the said defendant, hath not paid the same or any part thereof to said company or to this plaintiff, whereby an action hath accrued to this plaintiff, as assignee in bankruptcy, to have and demand of the said defendant the said sum of ten thousand dollars.

And whereas, also, the said defendant afterwards, to wit, on the day and year last aforesaid, at Chicago, in the northern district of Illinois aforesaid, was indebted to the said plaintiff, assignee as aforesaid, in the further sum of ten thousand dollars, like lawful money, for one hundred shares of the capital stock of the Great Western Insurance Company, theretofore issued and delivered to him, the said defendant, of the par value of one hundred dollars per share, by the Great Western Insurance Company at his, the said defendant's, special instance and request, and which said shares of said capital stock were severally at the commencement of this suit owned and held by him, the said defendant, and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Chicago aforesaid, undertook, and then and there faithfully promised to pay said last-mentioned sum of money when he, the said defendant, should be thereunto afterwards requested; yet though often requested, said defendant wholly neglects and refuses to pay therefor, or for any part thereof.

And whereas also afterwards, to wit, on the day and year last aforesaid, to wit, in Chicago aforesaid, in consideration that the Great Western Insurance Company, a corporation theretofore created, and existing under and in pursuance of the laws of the State of Illinois, at the like special instance and request of the said defendant had before that time issued in due form of law, and delivered to him, the said defendant, one hundred shares of its capital stock, of the par value of one hundred dollars for each and every share so issued and delivered to said defendant, he, the said defendant, undertook and then and there faithfully promised the said Great Western Insurance Company, and the said plaintiff as its assignee, legally appointed, to pay for the said share' so issued to and held by him, the said
15 defendant as aforesaid, the sum of one hundred dollars for each and every share of the said capital stock so issued and delivered to him, the said defendant, as aforesaid, when he should be thereunto afterwards requested; yet, though often requested, said defendant has not paid the said sum of money, or any part thereof, to the said Great Western Insurance Company, or to the plaintiff, its assignee as aforesaid, but wholly neglects and refuses so to do.

And whereas also the said defendant heretofore, to wit, on the 11th day of April, A. D. 1872, at Chicago, in the northern district of Illinois,

was indebted to the Great Western Insurance Company, a corporation theretofore created and existing under and in pursuance of the laws of the State of Illinois, and to the plaintiff at the commencement of this suit, as assignee thereof for that purpose duly appointed, for divers stocks, goods, and chattles, to wit, one hundred shares of the capital stock of the Great Western Insurance Company of the par value of one hundred dollars, for each and every share before that time subscribed for, issued to, and held by the said defendant, at his special instance and request, whereby the said defendant became and was a stockholder in the said Great Western Insurance Company, the rights and privileges whereof the said defendant used and enjoyed, with the gains and profits thereunto pertaining, and being so indebted he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the said city of Chicago aforesaid, undertook and then and there faithfully promised the said plaintiff's assignee as aforesaid to pay him for the said goods, chattels, and stock at the rate of one hundred dollars per share thereof, when he, the said defendant, should be thereunto afterwards requested.

Yet, though often requested, the said defendant wholly neglects and refuses to pay either of the sums of money in the several counts in this declaration mentioned, or any part thereof, to the said plaintiff, assignee as aforesaid, to the plaintiff's damage, as assignee as aforesaid, as he says, in the sum of ten thousand dollars, and therefore he brings suit.

By SMITH & WATERMAN,
His Att'ys.

16 The original subscription paper, mentioned in first count, having been destroyed by fire, a copy thereof is not given.

SMITH & WATERMAN, *Att'ys.*

(Indorsed:) Filed Sept. 25, 1872. Wm. H. Bradley, clerk.

On this day, to wit, the 21st day of October, A. D. 1872, in the October term in said year of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

CLARK W. UPTON, ASSIGNEE, ETC.,
v.
MARY C. SANGER. } Assumpsit.

Now comes the defendant, by his attorney, and with leave of court withdraws his demurrer filed herein, and thereupon the time is extended ten days to plead herein.

On this day, to wit, the 31st day of October, A. D. 1872, said defendant, by her attorneys, filed in said clerk's office her plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the district court of the United States, northern district of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

CLARK W. UPTON, ASSIGNEE, ETC., OF GREAT Western Insurance Co.,
v.
MARY C. SANGER.

And now comes the said defendant, by Monroe & Bisbee, her attor-

neys, and defends the wrong and injury, when, etc., and says that she did not undertake and promise in manner and form as said plaintiff has in his declaration thereof complained against her. And of this she, the said defendant, puts herself upon the country, etc.

By MONROE & BISBEE,
Deft's Att'ys.

17 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the district court of the United States for said district.

CLARK W. UPTON, ASSIGNEE, ETC.,
v.
MARY C. SANGER.

STATE OF ILLINOIS, *County of Cook, ss:*

Mary C. Sanger, being duly sworn, says that she has a good and valid defense to said action upon the merits thereof, as she verily believes.

MARY C. SANGER.

Subscribed and sworn to before me this 11th day of October, 1872.
[NOTARIAL SEAL.] WM. B. GIBBS,
Notary Public.

(Indorsed:) Filed Oct. 31st, 1872. Wm. H. Bradley, clerk.

On this day, to wit, the 14th day of January, A. D. 1873, in the December term, A. D. 1872, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. James C. Hopkins, judge, the following entry appears, to wit:

Jury empaneled and verdict.

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt,
v.
MARY C. SANGER. } Assumpsit.

Now come the parties by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit: W. G. Earl, S. McCotter, E. Reynolds, C. Northrup, L. H. Todd, N. Sleeper, William Petty, A. Sisson, George H. West, C. W. Rogers, W. H. Sherman, and J. H. Harris, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence and the arguments of counsel and receiving the instructions of the court, the jury
18 retired to consider of their verdict, and after a short absence the jury returned into court the following verdict, to wit:

We, the jury, find the issue for the plaintiff, and assess his damages to the sum of six thousand one hundred and fifty dollars.

And thereupon the defendant, by her attorney, moves the court for a new trial herein.

On this day, to wit, the 5th day of February. A. D. 1873, in the De-

cember term, A. D. 1872, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. James C. Hopkins, judge, appears the following entry, to wit:

Judgment.

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt,
v.
MARY C. SANGER. } Assumpsit.

Now comes the plaintiff, by his attorney, and the motion of the defendant, heretofore entered herein, for a new trial of this cause, coming on to be heard, and no one appearing to urge the same, it is overruled.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of six thousand one hundred and fifty dollars, his damages, so as aforesaid assessed, together with his costs in this behalf expended, amounting to the sum of one hundred fifty-two dollars and thirty-two cents, and that he have execution therefor.

On the hearing of said cause the following exceptions were taken, and were allowed by the court and made of record, and are in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court of United States in and for said district.

19 CLARK W. UPTON, ASSIGNEE OF GREAT Western Insurance Company, bankrupt,
v.
MARY C. SANGER. } Bill of exceptions.

Be it remembered that upon the trial of this cause the plaintiff, to maintain the issue on his part, offered in evidence a pamphlet-copy of the by-laws, prospectus, and charter of the Great Western Insurance Company, which are as follows, to wit:

Prospectus and charter.

Prospectus of the Great Western Ins. Co., showing charter, by-laws, place of business, etc. Great Western Insurance Company. Central Office, Chicago, Illinois. Capital stock, $5,000,000.00; Subscribed capital, 1,188,000.00; cash capital, 222,831.00. Chicago: Jno. W. Dean, printer, 115 & 117 Dearborn s't. 1871.

Effectiveness of plan.

The plan on which this company is organized is simple and effective. It proposes the most ample and perfect protection to policy-holders, and a rapid accumulation of business at the smallest ratio of expense. The

amount of capital stock is $5,000,000, with twenty per cent. paid in, thus securing a guarantee capital to policy-holders at once of $1,000,000. Dividends are to be made semi-annually in cash, not to exceed five per cent. If the semi-annual dividends exceed this amount, (ten per cent. per annum,) the sum will go toward paying up the remaining unpaid eighty per cent. The capital is not taken by a few persons, but is to be widely distributed. Wherever $10,000 or more is subscribed, a branch office is established, with president and local board of officers. The stock at each locality will be represented at the annual meeting by the president or directors, or their legal representatives.

20 The managers and directors of the branches constitute an advisory board of management for the advancement of business, to guard against bad risks, and to promote the general interests of the company.

Great Western Fire-Insurance Company, cor. La Salle and Monroe sts., Chicago. H. L. Stewart, president; C. D. Hooker, secretary; R. J. Waters, vice-president; M. P. Stone, treasurer.

Statement, January 1st, 1871.

Subscribed capital	$1,188,000 00
Cash capital	222,831 42
Surplus	51,862 12
Assets, January 1st, 1871	274,693 54

ASSETS.

First mortgages on real estate duly recorded	183,275 00
Cash in hand and in bank	16,622 37
Chicago west side park bonds	360 00
C. & N. W. R. R. land-certificates	4,530 00
Interest on mortgages, (not due)	10,345 25
Bills receivable, cash premiums on farm-risks	16,607 04
Interest on same	519 87
City collections and accounts	11,503 83
Office furniture and personal property	4,219 47
Due from agents and insurance co's	26,710 71

LIABILITIES.

Losses adjusted, (paid since statement)	1,417 68
Losses in process of adjustment	3,183 71
All other claims	1,634 09

STATE OF ILLINOIS,
Auditor's Office, Department of Insurance:

Whereas the Great Western Insurance Company, located at Chicago, in the State of Illinois, has filed in this office a statement of the condition of its affairs, as required by the provisions of an act approved March 11, 1869, showing that it is possessed of the requisite amount of capital invested as required by law; and whereas an examination of the affairs and conditions of said company, made by me in pursuance of the

21 provisions of the act aforesaid, has fully verified the statement as filed in this office by said company;

Now, therefore, in pursuance of the provisions of the act aforesaid, I, Charles E. Lippincott, auditor of public accounts of the State of Illi-

nois, do hereby certify that the said Great Western Insurance Company is authorized to transact its appropriate business of fire insurance in this State, in accordance with the laws thereof, until the 31st day of January, A. D. 1872.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, at Springfield, Ills., this 28th day of February, A. D. 1871.

C. E. LIPPINCOTT,
Auditor of Public Accounts.

To the introduction of which the defendant objected, on the ground that there was nothing to show that the fourth section of said charter was ever amended as it purports to be, or that the capital stock was ever increased from $100,000 to $500,000, and also because the charter itself is a public act, and appears so in the authorized edition of the laws of Illinois, and should be shown in that way. Which objections were overruled by said court, and said pamphlet and charter read in evidence. To which said defendant then and there excepted.

And that the plaintiff offered in evidence a certified copy of the papers on file in the auditor's office of the State of Illinois, of the proceedings amending the charter of the company so as to authorize the increase of the capital stock of said company, which certified copy is as follows:

AUDITOR'S CERTIFIED COPY OF PROCEEDINGS INCREASING CAPITAL STOCK.

STATE OF ILLINOIS,
Auditor's Office, Department of Insurance:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that I have compared the annexed copies of papers in the matter of the increase of capital of the Great Western Insurance Company of Chicago, Illinois, with the original on file in this office, and that the same are correct transcripts therefrom and of the whole of said originals.

22 In witness whereof I have hereunto set my hand and affixed my official seal at the city of Springfield, this twenty-ninth day of August, A. D. 1872.

[AUDITOR'S SEAL.]

C. E. LIPPINCOTT,
Auditor of Public Accounts.

(Copy. Blank No. 6.)

OATH OF DIRECTORS.

STATE OF ILLINOIS.
Department of Insurance, Auditor's Office:

OFFICE OF THE GREAT WESTERN INSURANCE COMPANY,
Chicago, Illinois, August 22nd, 1870.

We, the undersigned directors of the Great Western Insurance Company of Chicago, Illinois, being duly sworn according to law, depose and say, and each one for himself says, that we compose a majority of the directors of the Great Western Insurance Company of Chicago, Illinois, aforesaid, that said Great Western Insurance Company has a capital

stock of five million dollars, divided into fifty thousand shares of one hundred dollars. One million and twelve thousand dollars of said capital is subscribed, and that eighteen and $\frac{33}{100}$ (averaged) dollars upon each share, amounting in the aggregate to one hundred eighty-six thousand and three hundred and thirty-five and $\frac{93}{100}$ dollars, has been paid in by the several holders of the stock of said company, and said money has been paid in, in cash, by the stockholders towards the payment of their respective shares, and not for any other purpose whatever. And it is intended that the same shall remain as the capital of the company, and that the same is now invested, as required by the laws of this State.

H. L. STEWART.
JAMES MONTGOMERY.
H. A. BECK.
J. D. WOODWARD.
R. J. WATERS.
C. D. HOOKER.
CHAS. J. STOKES.
WASHINGTON LIBBY.
CHAS. B. SMITH.
A. S. PECK.
M. SMITH.
23 G. N. ARCHIBALD.
J. M. W. JONES.
E. EUGENE CALDWELL.
W. N. STURGES.
CHAS. V. DYER.
J. McK. SANGER.
L. S. MAJOR. ($5,000 stock, 20 per cent. paid in.)

Subscribed and sworn to before me by each of the subscribers hereto, on this 22nd day of August, 1870. Given under my hand and official seal.

[NOTARIAL SEAL.] GEORGE C. CHRISTIAN,
Notary Public.

(Indorsed:) Filed August 23rd, 1870. C. E. Lippincott, auditor public accounts.

NOTICE.

The Great Western Insurance Company of Chicago, Illinois, hereby gives notice that it is the intention to increase its capital stock to five million dollars, three-fourths in amount of the stockholders thereof having given their written consent to such measure.

H. L. STEWART, *President.*

C. D. HOOKER, *Secretary.*

CHICAGO, ILLINOIS, *June 25th*, 1870.

I, the undersigned, one of the publishers of the Chicago Tribune, do hereby certify that a notice, of which the annexed is a true copy, was published for four successive weeks, to wit, four times, in the daily edition of the Chicago Tribune, a newspaper published in the city of Chicago, and of general circulation throughout the county of Cook, and State of Illinois, and that the date of the first paper containing the same was the 29th day of June, A. D. 1870, and that the date of the last paper containing the same was the 20th day of July, A. D. 1870.

Dated at Chicago, this 23rd day July, 1870.

[COMPANY'S SEAL.] TRIBUNE CO., *Publishers.*
By J. T. FLYNN, *Cashier.*

[5-cent U. S. int. rev. stamp.]

24 We, the undersigned stockholders of the Great Western Insurance Company, of Chicago, Illinois, do hereby assent to and express our desire that the capital stock of said company shall be increased to five millions of dollars.

STOCKHOLDERS.

Names.	Names.
H. L. STEWART.	M. SMITH.
C. D. HOOKER.	E. C. STEVENS.
H. H. PECK.	J. D. WOODWARD.
SIMEON CHASE.	FERNANDO JONES.
CHAS. J. STOKES.	JAMES W. REES.
R. J. WATERS.	JOHN W. DEAN.
J. T. FOSTER.	A. S. PECK.
CHAS. B. SMITH.	LOIS NELKEE.
J. R. SHIPHERD.	O. D. MOORES.
J. McK. SANGER.	J. B. SULLIVAN.
WASHINGTON LIBBY.	CASS, PORTER & BARROWS.
J. S. WALLACE.	PETER CALDWELL.
L. P. SANGER.	ABRAM VAN DUSEN.
BENJAMIN CARVER.	LUTERLEN, CLASSEN & CO.
PHILIP WADSWORTH.	LEWIS BENEDICT.
JAMES MONTGOMERY.	FREDERICK HERHOLD.
JOHN LASSEN.	W. N. STURGESS.
CHAS. V. DYER.	H. H. NEWELL.
JOHN F. EBERHART.	A. B. PULLMAN.
ATSTIN CROVER.	P. SHIRLEY.
O. L. MANN.	A. C. STEWART.
J. M. W. JONES.	E. EUGENE CALDWELL.
ROBET H. FOSS.	MARY C. SANGER.
CHAS. SHOHN.	E. VAN BUREN.
	L. S. MAJOR.

Charter of the Great Western Insurance Company, of Chicago, Illinois

SEC. 1. Be it enacted by the people of the State of Illinois represented in general assembly, That William W. Danenhower, Jacob Russell, Thomas Hale, George Ely, Rober H. Foss, and their successors and associates, be and are hereby created a body corporate and politic, under the name and style of the Great Western Insurance Company, situated at Chicago, and by that name shall have and enjoy all the rights and privileges and immunities that other like corporations have, and be recognized in all courts of justice and equity in this State.

SEC. 2. When the said party and their associates shall have subscribed one hundred thousand dollars, paying in as a comp ny-fund five per cent. on the amount subscribed, and securing the balance to be paid on demand or otherwise, by approved judgment notes, by hypothecated stock-mortgages on real estate in Cook County, or other satisfactory security, and shall have chosen nine directors, and these directors shall have chosen one of their number president, and appointed a secretary and treasurer, it shall be deemed fully organized, and enjoy the powers herein conferred.

SEC. 3. The said company shall have power to make insurance, and take risks on all kinds of property, both marine and fire, and charge and receive such premiums as may be agreed by and between the parties, either upon the mutual or stock principle or both.

SEC. 4. The company shall have power to use, invest, or loan its surplus funds in or on bottomry or respondentia, in bonds, mortgages, or personal security, at such rates as private persons may legally do by the laws of this State, and may increase its capital to five hundred thousand dollars.

SEC. 5. The said company may establish agencies, and do all acts not inconsistent with the constitution, the laws of this State, or the United States, necessary to and for the full use and enjoyment, and to carry out the full objects of this act.

SEC. 6. This act shall be deemed a private act, and be liberally construed for the purposes therein contained, and take effect from and after its passage.

Approved February 4th, 1857.

Amendment to section 4.

It is desired that this charter be amended so that section four (4) shall read:

The company shall have power to use, invest, or loan its suplus funds in or on stocks, bottomry and respondentia, in mortgages or personal securities, at such rates as private persons may legally do by the laws of this State, and may increase its capital to five millions of dollars.

26 { GREAT WESTERN INS. CO. SEAL. } Given under the seal of the Great Western Insurance Company this twenty-seventh day of June, 1870.

H. L. STEWART,
President.

C. D. HOOKER, *Secretary.*

STATE OF ILLINOIS,
Attorney-General's Office:

SPRINGFIELD, *July 28th*, 1870.

I, Washington Bushnell, attorney-general of the State of Illinois, do hereby certify that I have examined the charter, amendments thereto, proof of publication, and the accompanying papers, in the matter of an increase of capital of the Great Western Fire Insurance Company of Chicago, Illinois, to five millions of dollars, and I find said papers conformable to the act of the general assembly of the State of Illinois, approved March 11th, 1869, and entitled "An act to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," and not inconsistent with the laws and constitution of the State of Illinois.

W. BUSHNELL,
Attorney-General of Ills.

To General C. E. LIPPINCOTT,
Auditor P. A., Springfield, Ills.:

AUDITOR'S OFFICE, ILLINOIS,
BUREAU OF INSURANCE,
Springfield, November 15, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify, from papers on file in this office, that on the 22d day of August, A. D. 1870, the capital stock of the Great Western Insurance Company of Chicago, Illinois, was, by the action, consent, and request of its stockholders and board of directors, authorized to be increased to the sum of five million dollars; and the fourth section of the original act of incorporation of said company was thereby amended and altered, so that its capital stock might be increased to five

27 million dollars, in conformity to an act of the general assembly of the State of Illinois, approved March 11th, 1869.

In testimony whereof I hereunto subscribe my name and affix the seal of my office at Springfield, the day and date first above written.

[AUDITOR'S SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

That the defendant objected to the introduction of the same, on the ground that the names of the stockholders purporting to be signed thereto were not signed by the stockholders, and that the names of the directors purporting to be signed thereto, were not signed by the directors, which objections were overruled by said court, and said copy read in evidence; to which said defendant then and there excepted.

And that the plaintiff offered in evidence a certified copy from the auditor's office of the State of Illinois of the charter of the company, so amended; which is in words and figures following, to wit:

Certified copy of amended charter.

Charter. An act to incorporate the Great Western Insurance Company of Chicago, Illinois.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that William W. Danenhower, Jacob Russell, Tho's Hale, George Ely, Robert H. Foss, and their successors and associates, be and are hereby created a body corporate and politic, under the name and style of the Great Western Insurance Company, situated at Chicago, and by that name shall have and enjoy all the rights and privileges and immunities that other like corporations have, and be recognized in all courts of justice and equity in this State.

SEC. 2. When the said party and their associates shall have subscribed one hundred thousand dollars, paying in as a company fund five per cent. on the amount subscribed, and securing the balance to be paid on demand or otherwise, by approved judgment-notes, by hypothecated stock, mortgages on real estate in Cook County, or other satisfactory security, and shall have chosen nine directors, and those directors shall have chosen one of their number president, and ap-
28 pointed a secretary and treasurer, it shall be deemed fully organized, and enjoy the powers herein conferred.

SEC. 3. The said company shall have power to make insurance and take risks on all kinds of property, both marine and fire, and charge and receive such premiums as may be agreed by and between the parties, either upon the mutual or stock principle, or both.

SEC. 4. The company shall have power to use, invest, or loan its surplus funds in or on stocks, bottomry and respondentia, in bonds, mortgages, or personal security, at such rates as private persons may legally do by the laws of this State, and may increase its capital to five hundred thousand dollars.

SEC. 5. The said company may establish agencies, and do all acts not inconsistent with the Constitution, the laws of this State, of the United States, necessary to and for the full use and enjoyment, and to carry out the full objects of this act.

SEC. 6. This act shall be deemed a private act, and be liberally con-

strued for the purposes therein contained, and take effect from and after its passage.

Approved February 4, 1857.

WM. H. BISSELL, *Governor.*

SAMUEL HOLMES, *Speaker of the House.*
JOHN WOOD, *Lieut. Governor, and Speaker of the Senate.*

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, Ozias M. Hatch, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office.

In witness whereof I have hereunto set my hand and affixed the great seal of State, at the city of Springfield, this 4th day of February, A. D. 1857.

OZIAS M. HATCH, *Sec'y of State.*

Amendment to 4th section of charter, adopted by resolution of the stockholders, and approved by the directors of said company, June 25th, 1870, in accordance with the general insurance law of the State of Illinois, entitled "An act to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," approved March 11th, 1869.

29 "Resolved, That the capital stock of this company be increased to five millions of dollars."

STATE OF ILLINOIS,
Insurance Department of Auditor's Office, ss:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing is a true copy of the amended charter of the Great Western Insurance Company of Chicago, Illinois, now on file in my office.

In witness whereof I have hereunto set my hand and affixed my seal of office, at the city of Springfield, this twenty-eighth day of August, A. D. 1872.

[AUDITOR'S SEAL.] C. E. LIPPINCOTT, *Auditor P. A.*

And also a certified copy from said auditor's office of the report of the company, made to the said auditor in December, 1870, which is in the words and figures following, to wit:

Certified copy of report of December, 1870.

STATE OF ILLINOIS,
Auditor's Office, Department of Insurance:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that I have compared the annexed copy of the annual statement of the condition of the Great Western Insurance Company of Chicago, Illinois, for the year ending Dec. 31st, 1870, made to this office pursuant to law, with the original on file in this office, and that the same is a correct transcript therefrom and of the whole of said original statement.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Springfield, this nineteenth day of November, A. D. 1872.

[AUDITOR'S SEAL.] C. E. LIPPINCOTT,
Auditor of Public Accounts.

30 STATE OF ILLINOIS, AUDITOR'S OFFICE,
Department of Insurance.

Annual statement of the condition of the Great Western (Fire) Insurance Company of Chicago, in the State of Illinois, for the year ending on the 31st day of December, 1870, made to the Auditor of Public Accounts of the State of Illinois, pursuant to the laws of said State:

I. CAPITAL.

The amount of capital stock of the company now outstanding (par value of shares $100 each) is	$1,188,000 00
The amount of paid-up capital stock of the company	222,831 42
Amount of unpaid subscribed capital for which the subscribers or holders are liable	965,168 58

II. ASSETS.

The amount of cash on hand in the company's office	$410 16	
The amount of cash deposited in the 3d Nat'l Bank	6,022 37	
The amount of cash deposited in the Wilkins and Stones Bank	10,600 00	
The amount of cash in hands of agents and in course of transmission	26,300 55	
Total cash		$43,333 08
Loans on bond and mortgage (duly recorded, and being first liens on the fee-simple,) upon which less than one year's interest is due, as per Schedule "B"		183,175 00

	Total par value. Dol's. Cts.	Total market value. Dol's. Cts.	
Chicago West Side City Park bonds, 8 per cent.	360 00	360 00	
C. and N. W. R. R. Land certificates	9,060 00	4,530 00	
Total par and market value (carried out at market value)	9,420 00	$4,890 00	4,890 00
Interest accrued, but not due			$10,345 25
Bills receivable, held by the company, considered good			16,607 04
Amount of United States internal-revenue stamps on hand			51 25
Office furniture, horse, buggy, and outfit, personal property			4,219 47
Due from ins. co's. and city collections			11,503 83
The aggregate amount of all the actual available assets of the company			274,124 92

III. LIABILITIES.

	Dol's. Cts.	Dol's. Cts.
Amount of losses adjusted, but not due	1,417 68	
Amount of losses incurred during the year, including those claimed and not yet due, and including those reported, upon which no action has been taken	3,183 71	
Total amount of losses unpaid, including those unadjusted, reported, and resisted		4,601 39
Amount of unearned premium or premiums received on unexpired risks	$80,838 69	
31 Amount required to safely re-insure all the outstanding risks of the company, estimated at an average of 40 per cent. of unexpired premiums		32,385 47
Amount of all other claims against the company, consisting of the following items		1,634 09
Bills payable.		
Aggregate amount of all unpaid losses, claims, and liabilities (except capital stock)		38,570 95

IV. INCOME.

	For Fire Risks. Dol's. Cts.	Dol's. Cts.	
Gross amount of cash actually received during the year for premiums	74,996 58		
Deduct amount paid for re-insurance, and amount paid to the insured for drawbacks and return premiums	2,245 19		
Total nett amount of cash actually received during the year for premiums, (carried out)		72,751 39	
Premiums on risks written during the year, not actually paid in cash during the year, including all premiums paid by notes or bills upon which cash has not been received during the year, (carried inside)	8,087 30		
Aggregate amount of income actually received during the year, in cash			72,751 39

V. EXPENDITURES.

	For Fire Risks. Dol's. Cts.	
Amount paid for losses which occurred during the year, deducting savings and salvage	5,344 11	
Total amount actually paid during the year for losses		$5,344 11
Amount paid during the year to agents, brokers, and persons other than officers and directors of the company, for commissions on premiums		5,966 64
Amount paid during the year for salaries, fees, and all charges of officers and directors of the company		11,985 99
Amount paid during the year for national taxes and duties		1,498 69
General expenses and supplies, adv		33,678 78
		$58,474 21

VI. MISCELLANEOUS.

	Fire Risks. Dollars. Cts.	Aggregate. Dollars. Cts.
Gross amount of risks written during the year	4,199,939 96	
Deduct amount of re-insurance effected thereon	30,500 00	
Nett amount of risks written during the year		4,169,439 96

	Having not more than one year to run. Dollars. Cts.	Having more than one, and not more than three years to run. Dollars. Cts.	Having more than three years to run. Dollars. Cts.	Aggregate. Dollars. Cts.
Amount of fire risks in force at the end of the year	3,922,931 63	170,945 00	75,563 33	
Aggregate amount of risks in force Dec. 31st, 18				4,169,439 96

32 Total amount loaned to directors of the company on bond and mortgage stock and other loans $143,800 00

The least amount of the company's stock owned by any one of the directors, at its par value, is 500 00

The total amount of the company's stock owned by all of the directors, at its par value, is 719,000 00

The par value of the stock of the company, per share, is $100; market value, per share, is $20.

Are dividends declared on premiums received for risks not terminated? Answer—Yes.

The number of agents employed by the company in the State of Illinois is 93.

The principal office of the company is located at Chicago, Cook Co., Illinois.

The company was incorporated Feb'y 4, 1857. Commenced business June 27, 1870. The duration of the charter is perpetual.

	Fire Risks. Dollars. Cts.
Amount of risks taken during the past year in the State of Illinois	2,010,135 16
Amount of premiums received during past year in the State of Illinois	33,373 16
Amount of losses incurred during the past year in the State of Illinois	3,568 92

STATE OF ILLINOIS,
County of Cook, ss :

H. L. Stewart, president, and C. D. Hooker, secretary of the Great Western Company, being duly sworn, depose and say, and each for himself says, that they are the above-described officers of the said company, and that, on the thirty-first day of December last, all of the above-described assets were the absolute property of the said company, free and clear from any liens or claims thereon, except as above stated, and that the foregoing statement, with the schedules and explanations hereto annexed and by them subscribed, are a true, full, and correct statement of the condition and affairs of the said company on the thirty-first day of December last and for the year ending on that day, according to the best of their information, knowledge, and belief respectively.

{ COMPANY'S SEAL. } (Signed) H. L. STEWART, *President.*
(Signed) C. D. HOOKER, *Secretary.*

Subscribed and sworn before me this 10th day of January, 1871.

{ NOTARIAL SEAL. } (Signed) HENRY WISNER,
Notary Public.

SCHEDULE "B."—*Containing a description of all the bonds and mortgages owned by the Great Western Insurance Company on the 31st day of December, 1870, the amount of principal unpaid thereon, with the company's valuation of the mortgaged premises, the amount for which the company hold fire-insurance policies on the buildings as collateral security, and the location and dimensions of the land, with the size and description of the buildings.* 33

No.	No.	Names of mortgagors.	Date of mortgage.	Mortgages recorded. In county of—	Book of mortgages.	Page.	Amount of principal unpaid.	Valuation of premises, in buildings.	Amount of insurance held by company on building.	Location, street and number.	Quantity or dimensions of land, and size and description of buildings.
546	36	H. L. Stewart	June 1, 1870	Cook	134	372	40,000 00	62,000 00		Sec. 1, R. 13, T. 38	38 acres, S. Chicago.
124	79	Abner Peck	Ap'l 28, "	Knox	12	479	10,000 00	20,000 00	6,000 00	Sec. 3, R. 3, T. 13	160 " Knox Co, Ill.
541	62	J. M. W. Jones	May 1, "	Cook	137	360	10,000 00	15,000 00		Sec. 17, R. 14, T. 40	Bl'ks 25 & 26, Chicago.
532	51	A. N. Waterman	May 1, "	"	134	359	2,000 00	3,000 00		Bl'k 23, lot 2	W. Chicago.
		S. C. Chamberlain	Ap'l 21, "	Winnebago	43	293	2,500 00	4,000 00		Sec. 23, R. 1, T. 41	Lots 1, 2, 3, 4, 5, 6, 8.
529	05	Harlan H. Peck	Mar. 22, "	Cook	134	355	3,600 00	5,400 00		Sec. 6, R. 14, T. 39	Lots 8, 9, 2, 3, 3, 12.
529	07	E. Eugene Caldwell	Ap'l 14, "	"	145	394	3,600 00	5,400 00		Sec. 6, R. 14, T. 39	Bl'k 123, lots 7, 1, 1, 2, 18.
529	06	Russel I. Waters	Mar. 10, "	"	134	356	1,800 00	2,800 00		Sec. 6, R. 14, T. 39	Lots 10, 11, 11, Chicago.
529	08	A. N. Waterman	Ap'l 23, "	"	145	395	3,600 00	4,500 00		Sec. 6, R. 14, T. 39	Lots 4, 12, 13, 16, "
29	21	C. D. Hooker	Ap'l 21, "	Lake	34	463	1,200 00	2,000 00		Bl'k 23	Lot 4, Highland Park.
546	37	H. H. Peck	June 1, "	Cook	134	384	600 00	900 00		Sec. 6, R. 14, T. 39	Lot 7, W. Chicago.
545	16	H. H. Peck	May 23, "	"	134	373	1,200 00	1,800 00		Sec. 6, R. 14, T. 39	Lots 4, 5.
551	34	O. P. Axtel	June 4, "	"	135	538	10,000 00	30,000 00		Sec. 14 & 12, R. 14, T. 35	240 acres.
518	08	M. Smith	May 9, "	"	134	347	10,000 00	15,000 00		Sec. 13, R. 13, T. 39	40 acres.
542	63	A. S. Peck	June 3, "	"	134	365	10,000 00	22,000 00		Sec. 17 & 18, R. 14, T. 13	Bl'k 14, 22 lots.
29	54	J. D. Woodward	June 8, "	Lake	34	470	1,200 00	2,000 00		Bl'k 23	Lot 22.
	45	S. C. Chamberlain	Nov. 13, "	Winnebago	29	310	3,000 00	5,000 00		Sec. 14, R. 4, T. 20	160 acres. 34
689	36	James Montgomery	Oct. 10, "	Cook	154	392	20,000 00	45,000 00		Sec. 15, R. 14, T. 38	Bl'k 3, S. Chicago.
742	59	J. D. Woodward	Nov. 23, "	"	640	216	15,000 00	39,000 00	8,000 00	Lot 881, bl'k 12	Riverside.
738	89	J. D. Woodward	Nov. 19, "	"	149	354	800 00	1,600 00		Sec. 9, R. 14, T. 38	Bl'k 1, lot 35.
732	75	J. D. Woodward	Nov. 15, "	"	154	539	2,000 00	4,000 00		Sec. 9, R. 14, T. 38	Bl'k 2, lot 16.
770	99	Mary C. Sanger	Dec. 16, "	"	155	32	10,000 00	30,000 00		Sec. 32, R. 14, T. 41	10 acres.
		J. W. Ellis	Aug. 27, "	Davis Co. Ia.	A.	516	2,000 00	7,000 00		P't S. E. ¼, sec. 25, R. 70	T. 14, S. E. ¼ of S. E. ¼ S. 16, 70, 14.
		J. B. Glenn	" "	" "	"	518	2,000 00	4,500 00		Lot 3, bl'k 18	Bloomfield, Ia.
		Baptist Hardy	" "	" "	"	514	1,000 00	2,000 00		E. ½ of S. W. ¼ S. 30	68, 13.
		E. G. Hardy	" "	" "	"	520	1,000 00	2,500 00		W. ½ of S. W. ¼ S. 30	68, 13.
		George Duffield	" "	" "	"	526	2,000 00	5,000 00		Lot 6, bl'k 18	Bloomfield, Ia.
		W. G. Davis	" "	" "	"	522	1,000 00	2,500 00		E. ½ S. W. ¼ S. 5, 68	13.
		Amen Buck	" "	" "	"	527	1,000 00	2,000 00		P't N. E. ¼ S. 4, 67, 13	And S. W. ¼ of S. W. 35, 68, 13.
		J. R. Sheafer	" "	" "	"	525	1,000 00	2,000 00		Lot 7, bl'k 18	Bloomfield, Ia.
		Thos. Davis	" "	" "	"	521	2,000 00	4,000 00		E. ½ S. W. ¼ S. 5	T. 68, R. 13, 80 acres.

A. H. Putnam	" "	" "	"	519	2,000 00	5,000 00	.....	S ½ S. E. ¼ sec. 27	69, 14, and N. ½ N. E. ¼ sec. 29, 69, 14.
W'm Hill	" "	" "	"	524	2,000 00	10,000 00	.....	P't of bl'k 24	Bloomfield, Iowa.
T. M. Fenton	" "	" "	"	527	1,000 00	2,500 00	.....	Lot 1 and 2, B. 18	Bloomfield, Iowa.
John M. Johnson	" "	" "	"	515	200 00	1,200 00	.....	Lot 2, B. 10	Bloomfield, Iowa.
J. D. Tribelcox	" "	" "	"	523	2,000 00	3,500 00	.....	Lot 2, B. 32	Bloomfield, Iowa.
Horace Hamilton	Nov. 8, "	Clay Co., Ia	3	284	100 00	400 00	.....	Lots 1, 2, 3, B. 10	McGregor, Iowa.
A. J. Jordan	Nov. 8, "	" "	2	458	200 00	400 00	.....	Lots 11, 12, B. 36	McGregor, Iowa.
Oli Nelson	Nov. 8, "	" "	12	198	200 00	800 00	.....	Sec. 15, R. 3. T. 95	80 acres.
T. E. Carter	Nov. 26, "	Chideson	G.	340	375 00	1,000 00	.....	Sec. 28, R. 14. T. 96	40 acres.

(Signed) C. D. HOOKER, *Secretary.*

(Signed) H. L. STEWART, *President.*

35 And also the license issued to the company to do business, which said license is in the words and figures following, to wit:

LICENSE.

AUDITOR'S OFFICE, ILLINOIS,
Bureau of Insurance:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the annexed is a true and correct copy of a certificate of authority issued by me to J. W. Adgate, of Jacksonville, to transact business for the Great Western Insurance Company of Chicago, Illinois, as shown by the records of my office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, this 22d day of November, A. D. 1872.

{ SEAL OF AUDI- } C. E. LIPPINCOTT,
{ TOR'S OFFICE. } *Auditor P. A.*

STATE OF ILLINOIS,
Auditor's Office, Insurance Department:

SPRINGFIELD, *August* 31, 1870.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that there has been filed in this office a sworn statement showing the condition of the Great Western Insurance Company, located at Chicago, in the State of Illinois, on the 25th day of August, A. D. 1870, in accordance with the provisions of an act of the general assembly of the State of Illinois, to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois, approved March 11, 1869; and said statement shows that said company is possessed of the requisite amount of capital invested as required by law. Authority is therefore given to the above-named company to transact its appropriate business of fire insurance in this State, in accordance with the laws thereof, until the 31st day of January, A. D. 1871.

I further certify that J. W. Adgate, of Jacksonville, is hereby
36 authorized, as an agent, to transact business, according to law, for said company.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Springfield, the day and year above written.

[AUDITOR'S SEAL.] (Signed) C. E. LIPPINCOTT,
Auditor of Public Accounts.

And the report of the examination by said auditor, of the affairs of said company; which said report is in the words and figures following, to wit:

Report of examination.

AUDITOR'S OFFICE, ILLINOIS,
Bureau of Insurance:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that on the twenty-seventh day of January, A. D. 1871, I made an examination of the affairs of the Great Western Insurance Company of Chicago, Illinois, by Lotus Niles, esq., my agent, duly appointed by me, in conformity to law, and that the annexed is a true and correct copy of the report of said Lotus Niles concerning said examination.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, this 19th day of November, A. D. 1872.

SEAL OF AUDITOR'S OFFICE.

C. E. LIPPINCOTT,
Auditor P. A.

STATE OF ILLINOIS,
Auditor's Office, Department of Insurance:

SPRINGFIELD, *Jan. 19th*, 1871.

To LOTUS NILES, Esq., Springfield:

SIR: In pursuance of the provisions of the act of the general assembly of the State of Illinois, entitled "An act to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," approved March 26th, 1869, you are hereby appointed and authorized to examine the capital, securities, and affairs of the Great Western Fire Insurance Company of Chicago,
37 in the State of Illinois, and make report to me under your own oath and the oaths of the president and secretary of said company, according to the forms annexed to this appointment.

In testimony whereof I hereunto subscribe my name and affix my seal of office the day and year firstabove written.

[AUDITOR'S SEAL.] (Signed) C. E. LIPPINCOTT,
Auditor of Public Accounts.

To the Hon. C. E. Lippincott, auditor of public accounts of the State of Illinois:

The undersigned, in pursuance of the appointment hereto annexed, bearing date the 19th day of January, A. D. 1871, has personally made an examination of the capital, securities, and affairs of the Great Western Insurance Company of the city of Chicago, in the State of Illinois, an insurance company claiming to have complied with all the requirements of said act, and hereby certifies that the capital of said company, as fixed by its charter, is thousand dollars, of which there has been two hundred twenty-two thousand eight hundred thirty-one 42-100 ($222,831.42) dollars paid in, and is now possessed by said company in money, or in the stocks, bonds, and mortgages required by said act aforesaid as part of the assets of the company, as shown in Schedule "A;" hereunto annexed, and the statement of the affairs of the company, as sworn to by the president and secretary of the company, and attached hereto, and marked Schedule "B," has been carefully compared by me with the books, vouchers, and papers of the company, as now on file in the company's office, and I find said statement in every particular to be correct except as modified or changed in Schedule "A," "B," hereto attached, and the officers of said company have furnished me satisfactory evidence that the company, in its own right, is possessed of all the assets and property as claimed in said statement, except the changes noted in Schedule "A" hereof.

In testimony whereof I hereto subscribe my name this 27th day of January, A. D. 1871.

(Signed) LOTUS NILES.

38 STATE OF ILLINOIS, *County:*

I, Lotus Niles, do solemnly swear that the foregoing report, subscribed by me, is true in every particular to the best of my knowledge, information, and belief.

(Signed) LOTUS NILES.

Sworn to before me and subscribed in my presence by the above-named Lotus Niles this 27th day of January, A. D. 1871.

Given under my hand and official seal.

[NOTARIAL SEAL.] (Signed) RUSSEL L. J. WATERS,
Notary Public.

STATE OF ILLINOIS, *County of Cook, ss:*

Russell J. Waters and Chester D. Hooker do solemnly swear that said Russell J. Waters is the vice-president and said Chester D. Hooker is the secretary of the Great Western Insurance Company, above named; that said company is organized in good faith, for the purpose of transacting the business of fire-insurance at Chicago, in the State of Illinois; that the securities and property exhibited by them as the assets of said company to the above-named Lotus Niles, (who was appointed by the auditor to examine the same,) are truly set forth and specified in schedule "A," hereto annexed, and are bona fide the property of and now owned and possessed by said company in its corporate capacity; that no part of said assets has been withdrawn, pledged, or in any manner impaired, nor loaned, or advanced to said company for the purpose of being exhibited as part of its assets.

(Signed) RUSSELL J. WATERS, *Vice-President.*
(Signed) C. D. HOOKER, *Secretary.*

Sworn to by the said Russell J. Waters and Chester D. Hooker before me, and subscribed to by them in my presence this 27th day of January, A. D. 1871.

(Signed) LOTUS NILES.

SCHEDULE A.—*Containing a particular description of all the actual assets owned by the Great Western Fire-Insurance Company on the 31st day of December*, 1870.

		Dollars.	Cts.
	Amount of cash on hand in the company's office, as shown by the company's books	428	97
39	Amount of cash deposited in the Third National Bank of Chicago, verified by the books of the bank	4,874	50
	Amount of cash in hands of agents and in course of transmission; this is the balance due of agents' accounts since Oct., 1870, the largest portion of which is of the month of Dec., 1870, and is probably good	35,800	55
	Loans on bonds and mortgages on which less than one year's interest is due, duly recorded and being first liens on the fee-simple—as per Schedule "B." The amount of said loans on real estate lying in the State of Illinois is (and evidence of record and value was exhibited, and in the case of all taken since previous examination, abstracts of title were furnished,) the sworn statement of J. T. Foster and Geo. W. Parker, freeholder, of Chicago, verified the value placed on No. 77,099 of the schedule. The statement of Harlan H. Peck was received as to the value of No. 73,889 and 73,275. Affidavits were furnished as to the balance of the property. The amount of said loans on real estate lying in the State of Iowa is $21,075.00. The usual evidence of record is indorsed on the mortgages, and a sworn statement of three citizens of Iowa		

was furnished as to the value of the land lying in Davis Co. Statement was furnished, but not under oath, as to the lands in Clayton and Chickasaw Counties. No abstracts of title or certificates thereof were furnished. I called the attention of the co. to sec. 8 of the insurance law, which in effect prohibits loans on real estate lying out of this State. I have not *not* thought it best from the foregoing facts to extend this amount	162,100	00
2 Chicago West Side City Park bonds, 8 per cent., No. 154, $200, and 156, $160	360	00
9 Chicago N. W. R. R. land certificates, No. 490,		
40 $480, 513, $1,920, 520, $1,860, 512, $960, 503, $960, 507, $960, 510, $960, 495, $480, 499, $480	4,530	00
Amount of interest on notes for premium not due	583	91
Interest accrued but not due on bonds and mortgages, (including interest on the Iowa mortgages)	10,345	25
Bills receivable held by the company, considered good, viz, stock notes drawing no interest	7,495	00
Notes for premiums, mostly for current business in 1870	8,528	13
Amount of United States internal-revenue stamps on hand	51	25
Amount of all other property belonging to the company, consisting of the following items:		
Office furniture, $1,569.47	1,569	47
Horse, buggy, and outfit	650	00
Charter expenses, $2,000.00. This item I do not value.		
Amount due from city collections for commissions, brokerage, money loaned, stock, etc., being ledger balances	11,503	83
	$248,820	86

NOTE A.—The "gross amount of cash actually received during the year for premiums," includes the amount in the hands of agents in the course of transmission.

NOTE B.—"Amount paid during the year for salaries, fees, and all charges of officers and directors of the company," includes the salaries of general agents.

NOTE C.—Amount paid during the year for national taxes and dues includes the amount paid for stamps, taxes, $327.06, rev. stamps, $1,171.63.

NOTE D.—"General expenses, supplies, and advertising," embraces the following items, viz: Stock count, $7,987.10; advertising, $950.91; charter, $2,000.00; supplies, $4,917.59; interest, $1,172.82; foreign
41 exp. and $5,272.53; city expenses, $3,527.97; office furniture and fixtures, $2,219.47; sundry expenses, not included in the foregoing, $5,592.89; profit and loss, $3,750.

(Signed) LOTUS NILES.

(Indorsed:) Filed February 27th, 1871.

(Signed) C. E. LIPPINCOTT,
Auditor Public Accounts.

To all which documents defendant then and there objected as immaterial, which objections were overruled by said court, and said documents read in evidence. To all which defendant then and there excepted.

And that the plaintiff also offered in evidence the deed to said assignee; which said deed is in the words and figures following, to wit:

Deed to assignee.

In the district court of the United States for the northern district of Illinois.

IN THE MATTER OF THE GREAT WESTERN INSURANCE COMPANY, BANKRUPT. } In bankruptcy.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents that Clark W. Upton, of Chicago, in the county of Cook and State of Illinois, in said district, has been duly appointed assignee in said matter. Now, therefore, I, Homer N. Hibbard, one of the registers of said court in bankruptcy, by virtue of the authority vested in me by the 14th section of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Clark W. Upton, assignee as aforesaid, all the estate, real and personal, of the said the Great Western Insurance Company of Chicago, bankrupt aforesaid, including all the property of whatever kind of which he is possessed, or in which he was interested or entitled to have, on the sixth day of February, A. D. 1872, with all his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said 14th section of said act, to have and to hold all the foregoing premises to the said Clark W. Upton and his heirs forever; in trust, nevertheless, for the uses and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

42

In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed this eleventh day of April, A. D. 1872.

[SEAL OF THE COURT.]

H. N. HIBBARD,
Register in Bankruptcy.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, Homer N. Hibbard, a register in bankruptcy in and for the said district, do hereby certify the foregoing to be a true copy of the deed of assignment of the estate and effects of said bankrupt in the matter of the Great Western Insurance Company of Chicago, bankrupt.

Dated this 25th day of September, A. D. 1872.

H. N. HIBBARD,
Register in Bankruptcy.

And that said plaintiff introduced evidence tending to show that about said company sold and defendant received two certificates of stock of said company, which certificates are as follows:

"No. 33.] THE GREAT WESTERN INSURANCE COMPANY.

"This is to certify that is entitled to fifty shares in the capital stock of the Great Western Insurance Co. of Chicago, Ills., of one hundred dollars each, transferable only on the books of the company, in person or by attorney, on the surrender of this certificate, being subject to the charter and by-laws of said company, of which twenty per cent. is payable as follows: Five per cent on receipt of stock-certificate, five per cent. in three months from date hereof, five

per cent. in six months from date hereof, five per cent. in nine months from date hereof, the balance being subject to the call of the directors, as they may be instructed by the majority of the stockholders represented at any regular meeting. Ten per cent. annual dividend from the surplus earnings guaranteed to stockholders on cash capital paid in.

"Chicago, Ills., March 10, 1870.

"L. S. MAJOR, *President.*

"J. D. WOODWARD, *Secretary.*"

"No. 34.] THE GREAT WESTERN INSURANCE COMPANY.

43 "This is to certify that is entitled to fifty shares in the capital stock of the Great Western Insurance Co. of Chicago, Ill., of one hundred dollars each, transferable only on the books of the company, in person or by attorney, on the surrender of this certificate, being subject to the charter and by-laws of said company, of which twenty per cent. is payable as follows: Five per cent. on receipt of stock-certificate; five per cent. in three months from date hereof; five per cent. in six months from date hereof; five per cent. in nine months from date hereof; the balance being subject to the call of the directors, as they may be instructed by the majority of the stockholders represented at any regular meeting. Ten per cent. annual dividend from the surplus earnings guaranteed to stockholders on cash capital paid in.

"Chicago, Ill., March 10, 1870.

"L. S. MAJOR, *President.*

"J. D. WOODWARD, *Secretary.*"

That said defendant paid for said stock twenty per cent. of the par value of the same, and paying part of said twenty per cent. in northwestern land-scrip, and giving her notes for the balance of said twenty per cent., which notes were duly paid to said company, and that said stock stood in her name upon the books of said company, and that there was evidence introduced tending to show that she received a dividend from said company thereon.

And that shortly after the fire of October 9, 1871, General Stewart, the president of the company, and brother of defendant, paid for her a call of twenty per cent. made upon said certificates of stock by the company, but that said defendant never authorized such payment, but repudiated the same, and that no more than forty per cent. had ever been paid on said stock.

No evidence was introduced tending to show that said defendant ever subscribed for said certificates of stock or for any stock of said company, or that her name appeared on any list of stockholders of said stock circulated by said company.

No other express contract was shown to have been made between said company and defendant.

And that the plaintiff offered in evidence the order of said district court, making a call or assessment upon the stockholders of said company for the unpaid portion thereof, which order was entered on the fifth day of July, A. D. 1872, and was as follows, to wit:

44 *Order for payment of stock.*

"IN THE MATTER OF THE GREAT WESTERN Insurance Company, bankrupt. } In bankruptcy.

"And now on this day comes C. W. Upton, assignee of the estate

of said bankrupt, and makes application to this court, showing that a large amount of the capital stock of the said bankrupt remains unpaid in part; that the whole amount of such capital stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt: and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount unpaid on the capital stock of said bankrupt be paid to said assignee on or before the 15th day of August, A.D. 1872, at his office in Chicago, Illinois; and in default thereof, that said assignee proceed to collect the same. It is further ordered, that notice of this call be given to the stockholders of said bankrupt, so far as known, without unreasonable delay, by publication or otherwise."

To the introduction of which the defendant objected, on the ground that it did not appear that any personal notice was given to any of the stockholders of said company or to this defendant of any application for such order or any hearing of the same by said court, and defendant offered to show that she received no notice of any intention of making such application; that no notice thereof was ever served upon her, and that it was unnecessary to make so large an assessment; that an assessment of a much smaller sum would have been sufficient to pay the losses of said company; which objections and offers were overruled by said court and rejected by said court, and said order was read in evidence, to all of which defendant then and there excepted.

No evidence was offered tending to show that the directors of said company had made any call for the payment of any portion of said stock under the direction of the stockholders, or that the stockholders, or any majority of them represented at any regular meeting, had ever instructed the directors to make such a call as was required by the conditions expressed in said certificates of stock.

45 And that the plaintiff offered in evidence the notice sent to stockholders, which is as follows:

Notice to stockholders.

OFFICE OF THE ASSIGNEE OF THE
GREAT WESTERN INSURANCE COMPANY,
163 *East Washington St., Chicago, July 8th*, 1872.

To

You are hereby notified that, on petition filed and proofs heard in the matter of the Great Western Insurance Company, a bankrupt, in the district court of the United States for the northern district of Illinois, the following order was made and entered of record in said court, on the fifth day of July, 1872, viz:

IN THE MATTER OF THE GREAT WESTERN Insurance Company, bankrupt. } In bankruptcy.

And now on this day comes C. W. Upton, assignee of the estate of said bankrupt, and makes application to this court showing that a large amount of the capital stock of the said bankrupt remains unpaid in part; that the whole amount of such capital stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt, and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount unpaid on the capital stock of the said bank-

rupt be paid to said assignee on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, and, in default thereof, that said assignee proceed to collect the same. It is further ordered that notice of this call be given to the stockholders of said bankrupt, so far as known, without unreasonable delay, by publication or otherwise."

The holders of the unpaid capital stock in said bankrupt corporation will please take notice, and govern themselves accordingly. Under the order of said court, and the action of the officers of said company
46 prior to bankruptcy, per cent. of the stock held by you, now standing on the books of said bankrupt, is long past due. The balance, by the order of said court, will become due August 15th, 1872. By a prompt remittance of the amount now due, costs will be avoided.

Respectfully,

C. W. UPTON, *Assignee.*

And also evidence tending to show that said notice was sent to defendant by mail in July, 1872, and that said notice was published for 30 days prior to August 15, 1872, in the Inter-Ocean, a newspaper published and of general circulation in said district. That defendant objected to the introduction of said notice and evidence, for reason that the same was not shown to have been served upon said defendant, or that defendant ever received such notice, which objections were overruled by said court, and said notice was read in evidence, to which defendant then and there excepted.

That the defendant, at the conclusion of plaintiff's testimony, moved to exclude all the testimony of the plaintiff, upon the ground that no sufficient case in law was made against said defendant under the declaration in said cause, which motion was overruled by said court, to which defendant then and there excepted.

And that said court then and there instructed the jury as follows:

Charge to jury.

GENTLEMEN OF THE JURY: The facts about this case are very brief. The law I have declared to you so many times, that if this defendant is a stockholder, she is estopped from denying the regularity of the organization and the right to do business de facto of this company. She is concluded by the order of the district court requiring the balance of the stock to be paid. The only question, then, for you to determine is, is she a stockholder? That depends upon the question whether this arrangement was made directly with her and the company, or whether she bought this stock of some third person who had it as a stockholder. That is the position assumed by the counsel upon both sides. Now, if the testimony satisfies you, and it is unnecessary for me to repeat
47 it if the testimony satisfies you, that this stock was issued by the company to this lady, this defendant, the fact that her name is not inserted in the certificates is immaterial. I think her buying the stock, paying for it, and accepting certificates in blank, is just the same as if her name was placed there. The company from that time treated her as a stockholder. She would have the rights of a stockholder. She could at any time have filled up that blank herself. The company was treating her as a stockholder. She was in law and in fact a stockholder if she brought it, and upon that you have heard the testimony that Mr. Hill first negotiated with her. He called upon her and negotiated and reported to General Stewart, and a meeting of the committee was had upon the propriety of accepting this Northwestern scrip in exchange for

this stock. What the result of that was I don't understand Gen. Stewart to say; he was not asked; but it resulted finally in the acceptance of this scrip in exchange for the stock, and her giving her notes for difference, I believe, to the company. Now, there is no question of the want of integrity upon the part of all these parties. There is nothing in the case to show that any witness here has stated anything but what they believed to be true, and it is a pleasure to the court and a pleasure to the jury to try cases of that kind, where they believe the witnesses have meant to tell the truth. But there is a difference between the defendant and Mr. Woodward, and it is for you to settle which of the two is correct.

Mrs. Sanger thinks the negotiation was made with Mr. Hill. She thinks the stock was delivered by Mr. Hill, but she is not entirely positive on that, but is positive on the other question. Then Mr. Woodward, who was secretary of the company, says after the negotiation was concluded and accepted by the company he went with the books—the stock-book and note-book—to see Mrs. Sanger. He presented her the certificates. She declined to have her name written in, because she was afraid she would be liable, and she wanted to occupy a position of no further liability, and therefore she would not allow her name to be written. She would not sign the book—the receipt-book—but she gave the notes and he delivered her the stock. If this stock was delivered directly to her, and she paid the company—if that was the transaction between her and the company, why, she is liable; and the fact
48 that a dividend was afterwards paid upon this stock and has gone into her possession, as the testimony tends to show, is a very strong circumstance to be considered by you.

The amount is not eighty per cent. in this case; the company gave her a credit of twenty. The amount will be six thousand dollars, with interest since August 15th, 1872, if anything.

That defendant then and there objected to the giving of said instructions, which objection was overruled by said court, to which defendant then and there excepted.

And that after receiving said instructions from said court, the jury retired, and thereafter rendered a verdict for the plaintiff.

That thereupon defendant moved for a new trial in said cause, which motion was overruled by said court, to which defendant then and there excepted.

That thereupon said court rendered judgment in said cause for said plaintiff, to which defendant then and there excepted.

And inasmuch as the foregoing matters do not appear of record in said cause, defendant prays that this, her bill of exceptions, may be signed and sealed and made a part of the record in said cause, and it is done accordingly.

J. C. HOPKINS, *Judge.* [SEAL.]

(Indorsed:) Filed as of February 5th, 1873, by agreement. W'm H. Bradley, clerk.

On this day, to wit, the 1st day of March, A. D. 1873, the following bond on appeal was filed in said clerk's office, to wit:

Appeal bond.

Know all men by these presents that we, Mary C. Sanger and James M. Sanger, and Henry S. Monroe, of Chicago, Cook County, Illinois, are held and firmly bound unto Clark W. Upton, assignee of the Great

Western Insurance Company, in the penal sum of thirteen thousand dollars, lawful money, for the payment of which, well and truly to be made to the said Clark W. Upton, assignee, and his successors, we do hereby bind ourselves and our heirs, executors, and administrators, and each of them, firmly by these presents.

49 Witness our hands and seals this first day of March, A. D. 1873.

The condition of the above obligation is such, that whereas said Clark W. Upton, assignee aforesaid, did on the fifth day of February, 1873, recover a judgment in the district court of the United States for the northern district of Illinois, in a cause therein, wherein said Upton, assignee, was plaintiff, and said Mary C. Sanger was defendant, for the sum of six thousand one hundred and fifty dollars, besides costs of suit, against said Mary C. Sanger; and whereas said Mary C. Sanger has prayed an appeal from the said judgment of the said district court to the circuit court of the United States in and for said district, for the purpose of reversing said judgment: Now, therefore, if the said Mary C. Sanger shall prosecute her said appeal with effect, and pay or cause to be paid any judgment that may be recovered against her in said suit, together with the costs thereof, then this obligation to be void; otherwise to remain in full force and virtue.

MARY C. SANGER. [SEAL.]
J. McK. SANGER. [SEAL.]
HENRY S. MONROE. [SEAL.]

Approved.

H. W. BLODGETT, *Judge.*

(Indorsed:) Filed March 1, 1873. W'm H. Bradley, cl'k.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings in said court in said entitled cause, wherein said Clark W. Upton, assignee, etc., is plaintiff, and said Mary C. Sanger is defendant, as appears from the records of said court remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court at my office in Chicago, in said district, this fifteenth day of April, A. D. 1873, and of our Independence the 97th year.

W'M H. BRADLEY, *Clerk.*

50 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the honorable the judge of the district court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court, before you, between Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, a bankrupt, plaintiff, and Mary C. Sanger, defendant, a manifest error hath happened, to the great damage of the said Mary C. Sanger, as by her complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are

hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the northern district of Illinois, together with this writ, so that you have the same at Chicago, in said district, on the first Monday of March next, in the said circuit court, to be then and there held, that the record and proceedings being inspected, the said circuit court may cause further to be done therein; to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this fifth day of February, A. D. 1873, and of our Independence the 97th year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

(Endorsed:) May 5th, 1873. W'm H. Bradley, clerk.

51 On the same day, to wit, the 5th day of May, A. D. 1873, said Mary C. Sanger, by her attorneys, filed in said clerk's office her bond for costs and citation in said entitled cause, which are respectively in words and figures following, to wit:

Bond.

U. S. circuit c't, N. dist. Ill's.

MARY C. SANGER
vs.
CLARK W. UPTON, ASSIGNEE, &C.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court.

Dated this 5th day of May, A. D. 1873.

MONROE, BISBEE & GIBBS.

(Endorsed:) Filed this 5th day of May, A. D. 1873. W'm H. Bradley, clerk.

52 *Citation.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States to be holden at Chicago, Illinois, on the 5th day of May next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Illinois, wherein Mary C. Sanger is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the hon. judge of the said district court, and the seal
53 of said court this 29 day of March, 1873, and of the Independence of the United States the 97th year.

J. C. HOPKINS,
U. S. Dist. Judge.

We hereby accept service of within this 10th day of April, 1873.

C. W. UPTON,
Per BOUTELL & WATERMAN,
Att'ys for Pl'ff.

(Endorsed:) Filed May 5th, 1873. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 8th day of May, A. D. 1873, said Mary C. Sanger, by her attorneys, filed in said clerk's office of said circuit court her assignment of errors in said entitled cause, which said assignment of errors is in words and figures following, to wit:

54 *Assignment of error.*

UNITED STATES OF AMERICA,
Northern District of Illinois:

In the circuit court of the United States in and for said district.

MARY C. SANGER, PLAINTIFF IN ERROR,
vs.
CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt.

And now comes said Mary C. Sanger, by Monroe & Bisbee, her attorneys, and assigns the following errors in the record and proceedings aforesaid of said district court, to wit:

I. Said court erred in admitting in evidence the pamphlet and charter of said company.

55 II. Said court erred in admitting in evidence the certified copy of proceedings for increase of capital stock of said company.

III. Said court erred in admitting in evidence the certified copy of the amended charter of said company, and the certified copy of the report of said company dated December, 1870, and the license of said company to do business, and the auditor's report of the examination of the affairs of said company.

IV. The said court erred in admitting in evidence the order of said district court, (in bankruptcy,) making an assessment on the stock of said company.

V. The said court erred in admitting in evidence the notice of assessment upon said stock.

56 VI. Said court erred in overruling the motion of plaintiff in error to exclude all the testimony of defendant in error.

VII. Said court erred in giving said instructions to said jury.

VIII. Said court erred in overruling said motion for a new trial.

IX. Said court erred in rendering judgment therein.

And plaintiff in error prays that said judgment may be reversed.

MONROE & BISBEE,
Attorneys for Plaintiff in Error.

(Endorsed:) Filed May 8, 1873. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 9th day of September, in the July
57 term, A. D. 1873, of said circuit court of the United States for said northern district of Illinois, before the Hon. Thomas Drummond, judge, appears the following entry in said entitled cause, to wit:

MARY C. SANGER *vs.* CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt.	Error from district court.

This cause having been heretofore argued by the counsel of the respective parties and submitted to the court upon the record herein from the district court, and taken under advisement; and the court having considered, and being now fully advised upon the matters herein,
58 affirms the judgment of the district court with costs.

And it appearing that a judgment was rendered in the district court in favor of Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, the defendant in error, and against Mary C. Sanger, the plaintiff in error, on the fifth day of February, in the year of our Lord one thousand eight hundred and seventy-three, for the sum of six thousand one hundred and fifty dollars for damages, and the sum of one hundred and fifty-two dollars and thirty-two cents for costs:

It is thereupon considered and adjudged by the court that the
59 said Clark W. Upton, assignee of the Great Western Insurance Company, a bankrupt, the defendant in error, do have and recover of the said Mary C. Sanger, the plaintiff in error, the said sum of six thousand one hundred and fifty dollars damages, together with the sum of one hundred and fifty-two dollars and thirty-two cents costs, being the amount of the said judgment in the district court for damages and costs, and also the further sum of two hundred and twenty-four dollars and seventy-seven cents, the interest which has accrued on the said judgment, amounting in all to the sum of six thousand five hun-
60 dred and twenty-seven dollars and nine cents, together with his costs and charges by him in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

Afterwards, to wit, on the sixth day of October, A. D. 1873, said Mary C. Sanger, by her attorneys, filed in said clerk's office her bond in said entitled , which said bond is in words and figures following, to wit:

Know all men by these presents that we, Mary C. Sanger, Jesse B. Thomas, and J. McK. Sanger, all of Chicago, Cook County, Illinois, are held and firmly bound unto Clark W. Upton, as assignee in bank-
61 ruptcy of the Great Western Insurance Company, also of the same county and State, in the penal sum of thirteen thousand dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents. Witness our hands and seals this 6th day of October, A. D. 1873.

The condition of the above obligation is such that whereas the said Clark W. Upton, as such assignee, did, on the 5th day of February, 1873, in the district court of the United States for the northern district of Illinois, recover a judgment against the above-bounden Mary C. Sanger for the sum of sixty-one hundred and fifty dollars, besides costs of suit,

from which judgment of said district court said Mary C. Sanger
62 duly obtained an appeal to the circuit court of the United States for said district; and whereas said circuit court did, on the ninth day of September, 1873, render a judgment duly affirming said judgment of said district court in all things, and from which judgment of said circuit court said Mary C. Sanger has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Mary C. Sanger shall duly prosecute her said appeal to said Supreme Court with effect, and moreover pay the amount of the judgment, costs, interest, and damages rendered, and to be rendered, against her in case said judgment shall be affirmed in said Supreme Court of the United States, then the above obligation to be void; otherwise to remain in full force and virtue.

63 MARY C. SANGER. [SEAL.]
JESSE B. THOMAS. [SEAL.]
J. McK. SANGER. [SEAL.]

Approved:

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Oct. 6th, 1873. W'm H. Bradley, clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a correct and complete transcript of the record of the proceedings had in said court in said cause of Mary C. Sanger, plaintiff in error, against Clark W. Upton, assignee, &c., defendant in error, as appears from the records of said court in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Chicago, in said district, this 10th day of October, A. D. 1873, and of our Independence the 98th year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

64 Supreme Court of the United States, October term, 1873.

MARY C. SANGER, PLAINTIFF IN ERROR, *vs.* CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company of Chicago, a bankrupt, defendant in error.	Writ of error to the circuit court of the United States for the northern district of Illinois.

Assignment of error.

And now comes the said plaintiff in error, by Monroe & Bisbee, her attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

I. Said district court erred in admitting in evidence the pamphlet
65 and charter of said company upon the trial of said cause against the objections of plaintiff in error.

II. Said district court erred in admitting in evidence upon the trial of said cause the certified copy of the proceedings for the increase of the capital stock of said company against the objections of plaintiff in error.

III. Said district court erred in admitting in evidence the certified copy of the amended charter of said company; the certified copy of the report of said company, dated December, 1870; the license of said

company to do business; and the auditor's report of the examination of the affairs of said company, upon the trial of said cause, against the objections of plaintiff in error.

IV. Said district court erred in admitting in evidence, upon
66 the trial of said cause, the order of said district court (in bankruptcy) making an assessment upon the capital stock of said company against the objections of plaintiff in error.

V. Said district court erred in admitting in evidence, upon the trial of said cause, the notice sent to stockholders of said assessment upon the capital stock of said company, against the objections of plaintiff in error.

VI. Said district court erred in overruling the motion of plaintiff in error to exclude all the evidence offered by defendant in error upon the trial of said cause.

VII. Said district court erred in giving said instructions to the jury, upon the trial of said cause, against the objections of plaintiff in error.

67 VIII. Said district court erred in overruling said motion of said plaintiff in error for a new trial of said cause, and in rendering judgment therein against said plaintiff in error.

IX. Said circuit court erred in affirming the judgment of said district court in said cause, and in rendering judgment therein against said plaintiff in error.

Wherefore said plaintiff in error prays that said judgment may be reversed, and that such further proceedings may be had in said cause as shall be agreeable to law and justice.

MONROE & BISBEE,
Attorneys for Plaintiff in Error.

68 And now comes the said defendant in error, by Boutell and Waterman, his attorneys, and says that there is no error in the record and proceedings aforesaid.

BOUTELL & WATERMAN,
Att'ys for Defendant in Error.

69 UNITED STATES OF AMERICA, *ss:*

The United States of America to the judges of the circuit court of the United States for the Northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment which is in the said court, before you, between Mary C. Sanger, plaintiff in error, and Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, a bankrupt, defendant in error, a manifest error hath happened, to the great damage of the said Mary C. Sanger, as by her complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of
70 the United States, together with this writ, so that you have the same at Washington on the second Monday in October next, in the said Supreme Court to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Nathan Clifford, acting Chief-Justice of the Supreme Court of the United States, this twelfth day of September, A. D. 1873, and of our Independence the ninety-eighth year.

[SEAL.] W'M H. BRADLEY,
Clerk of Circuit Court U. S., Northern District of Illinois.

(Indorsed:) Mary C. Sanger, plaintiff in error, *vs.* Clark W. Upton, assignee, &c., defendant in error. Writ of error.

71 The United States of America to Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Mary C. Sanger is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Henry W. Blodgett, acting judge of the said circuit court, this 6th day of October, in the year of our Lord one thousand eight hundred and seventy-three.

W. H. BLODGETT,
Judge.

72 (Indorsed:) Upton, assignee, *vs.* Sanger. Citation.

Service accepted this 6th day of October, A. D. 1873.

BOUTELL & WATERMAN,
Att'ys for C. W. Upton.

(Indorsement on cover:) No. 246. Mary C. Sanger, plaintiff in error, *vs.* Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company. N. Illinois, C. C. U. S. Filed 14 October, 1873.

IN THE

Supreme Court of the United States.

No. 35.

MARY C. SANGER,
Plaintiff in Error.

—*vs.*—

CLARK W. UPTON, Assignee, etc.,
Defendant in Error.

In Error to the United States Circuit Court for the Northern District of Illinois.

Argument for Plaintiff in Error.

H. S. MONROE,
L. H. BISBEE,

Attorneys for Plaintiff in Error.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.

1875.

IN THE

Supreme Court of the United States.

No. 35.

MARY C. SANGER,
Plaintiff in Error.

—*vs.*—

CLARK W. UPTON, Assignee in Bankruptcy of the Great Western Insurance Company,
Defendant in Error.

In Error to the United States Circuit Court for the Northern District of Illinois.

Argument for Plaintiff in Error.

The plaintiff in error, sometime in 1870, exchanged some Nortwestern land scrip for one hundred shares of stock in the Great Western Insurance Company of Chicago. The certificates of this stock were given to her in blank as they were issued, her name never appearing in the certificates, nor on the books of the company. She received and held the certificates until after the bankruptcy of the insurance company. She never subscribed for any stock, nor did she ever agree in any way or manner to pay anything more than had been paid when she received the certificates. The form of the certificate was as follows:

"No. 34.—THE GREAT WESTERN INSURANCE COM-
"PANY.

"This is to certify that ——— ——— is entitled to "fifty shares in the capital stock of the Great Western "Insurance Company of Chicago, Ills., of one hundred "dollars each, transferable only on the books of the com- "pany, in person or by attorney, on the surrender of this "certificate, being subject to the charter and by-laws of "said company, of which twenty per cent. is payable as "follows: Five per cent. on receipt of stock certificate; "five per cent. in three months from date hereof; five per "cent. in six months from date hereof; five per cent. in "nine months from date hereof; the balance being subject "to the call of the directors as they may be instructed by "the majority of the stockholders, represented at any "regular meeting. Ten per cent. annual dividend from "the surplus earnings guaranteed to stockholders on cash "capital paid in.

"CHICAGO, ILL., March 10, 1870.

"L. S. MAJOR, *President.*

"J. D. WOODWARD, *Secretary.*"

The charter of the Great Western Insurance Company was granted by the legislature of the State of Illinois in 1857, and the present company was organized under this charter in 1869. (See Record pp. 15 and 16.)

The charter is silent upon the question of liability of stockholders, nor is it claimed that any liability exists under any statute of law. The record does not show what losses the company sustained in the great fire of October 9th, 1871, nor what its liabilities were at the time of the bankruptcy. The case is alike destitute of the amount of assets required for any reason whatever, by the assignee or his bankrupt, on the 5th dayof July, 1872.

The bankrupt corporation was adjudged such in March,

1872, and the defendant in error was duly elected and qualified assignee.

July 5th, 1872, the United States District Court, for the Northern District of Illinois, directed the following order:

"ORDER FOR PAYMENT OF STOCK.

"IN THE MATTER OF THE GREAT
"WESTERN INSURANCE COMPANY, } *In Bankruptcy.*
"BANKRUPT.

"And now, on this day, comes C. W. Upton, assignee "of the estate of said bankrupt, and makes application to "this court, showing that a large amount of the capital "stock of the said bankrupt remains unpaid, in part; that "the whole amount of said capital stock will be required "to be paid, in order to meet the demand now due, from "and proven against the estate of said bankrupt; and up- "on investigation of the facts of the matter, and the court "being fully advised in the premises, it is ordered that the en- "tire amount unpaid on the capital stock of said bankrupt, "be paid to said assignee, on or before the 15th of August, "A. D. 1872, at his office in Chicago, Illinois, and in de- "fault thereof, the assignee proceed to collect the same. "It is further ordered, that notice of this call be given to "the stockholders of said bankrupt, so far as known, with- "out unreasonable delay, by publication, or otherwise."

No notice for an application for such an order was ever given. It was wholly an *ex parte* proceeding.

Upon the trial of this cause in the district court of the United States, the plaintiff in error objected to the introduction of this order, for the reason that no notice of the application of such an order was ever given, and that this plaintiff in error never had any notice of such an order having been made, and claims that it had no effect or validity whatever, as far as she was concerned. She also offered to prove that it was unnecessary to make so large

an assessment as this. The court refused such proof, and instructed the jury in substance that if they found that Mrs. Sanger was a stockholder, she was concluded by the order of July 5th, 1872, and was liable to the assignee for $6,000, and six per cent. on it since August 15th, 1872. Defendant excepted to these instructions. There was a verdict for plaintiff, motion for a new trial, which was overruled, and judgment on verdict. The case was taken up on a writ of error to the circuit court of the United States, for the Northern District of Illinois. Errors were duly assigned, and the cause heard, and the circuit court affirmed the judgment of the district court, and rendered a judgment in favor of plaintiff in error, against the defendant in error, and the costs and the interest on the judgment, and ordered execution therefor.

Assignment of Errors.

The plaintiff in error assigns, and relies upon, the following errors in the record of the District Court:

First. The court erred in admitting in evidence the prospectus and charter of the Great Western Insurance Company, (it being a pamphlet containing the prospectus and charter.)

Second. The court erred in admitting in evidence on the trial the order of the United States District Court, of July 5th, 1872, and in ruling that said order was binding and conclusive on the defendant on this action.

Third. The court erred in refusing to admit the testimony, on the part of the defense, that she, (the plaintiff in in error), received no notice of the intention of the assignee, (defendant in error), of making any application to the District Court for the order of July 5th, 1872, and of her offer to

show that she received no notice of any such order having been made; and the court further erred in rejecting her offer to show that it was unnecessary to make so large an assessment, and that an assessment of a much smaller sum would have been sufficient to pay the losses of said company.

Fourth. The court erred in instructing the jury as follows:

"She is concluded by the order of the District Court "requiring the balance of the stock to be paid. The only "question, then, for you to determine is, Is she a stock-"holder? * * * If this stock was delivered directly "to her, and she paid the company; if that was the trans-"action between her and the company, why, she is liable. "The amount will be six thousand dollars, with interest "since August 15th, 1872, if anything."

Fifth. In denying motions for new trial, and in arrest of judgment.

And the plaintiff in error assigns and relies upon the following errors in the record of the Circuit Court:

First. The court erred in affirming the judgment of the District Court.

Second. The court erred in rendering a judgment in favor of the defendant in error, for the amount of the judgment in the District Court, with costs and interest on the judgment and costs.

ARGUMENT.

I.

The first error to which we desire to call the attention of the court, is the admission in evidence of the pamphlet *prospectus* of the Great Western Insurance Company. It is apparent from the record, (pp. 11, 12, and 13,) that the company while doing business, and in prosperous circumstances, as is the general custom, issued its annual prospectus, showing its charter, by-laws, capital stock, assets, etc. It does not appear that Mrs. Sanger had any notice of such a pamphlet, or that she had anything whatever to do with it. It was, in fact, a means of advertising; her name was in no way connected with it. If it was offered as proof, tending to show that Mrs. Sanger was a stockholder, it most signally failed to show anything of the kind, and ought to have been rejected as immaterial, and if it was offered to show that a fraud was committed upon the stockholders or creditors, it should have appeared in some way that Mrs. Sanger *knew* of it, or approved of it, or in some way was instrumental or cognizant of its circulation. Again, if it was offered for the purpose of showing the charter of the Great Western Insurance Company, it was clearly inadmissible, for the reason that a public charter can only be shown by a certified copy from the Secretary of State, or by reference to a properly authenticated copy of the private laws of the State of Illinois.

II.

It will be admitted that this suit cannot be sustained, unless the order of July 5th, (Rec., pp. 29 and 30,) shall have the effect of, and amount to, a call or an assessment upon the stockholders of the bankrupt, to pay in the unpaid balance of their stock.

Shall it be given such an effect?

If the court had jurisdiction over the entire subject matter affected by the order, as held by the court below, then it was a valid call, otherwise void.

Out of this whole matter the Great Western Insurance Company, bankrupt, is one distinct party, the plaintiff in error, Mary C. Sanger, is another, and the creditors of the bankrupt occupy the position of still another party.

The court had unquestionable jurisdiction over the first party, for it is really into the arms of the law, and as well the court, that this party has fallen, and while the fact of bankruptcy confers upon the court summary and absolute jurisdiction over the bankrupt and his estate, no such sweeping power is given over the debtors of the bankrupt. On application of the assignee, the court, acting from the standpoint of the bankrupt, can be considered, properly, perhaps, as having jurisdiction over person and rights indiscriminately, and without the trouble or delay of notice, but over the person or personal liabilities of debtors to the bankrupt, and over *their* rights, the court has no power without first affording an opportunity for such parties *to show cause.*

The order of July 5th results in fastening upon the plaintiff in error a very heavy and important liability, without a chance on her part to have shown a single or many reasons that might have existed why the assessment should not have been made. If this view is correct, the call was void, and being void, this suit is groundless. It was error to deny the plaintiff in error the privilege of

showing, that the entire unpaid balance of the stock was not necessary to meet the liabilities of the bankrupt. So far as this case is cocerned, then, it must be that there was no occasion for paying up the whole capital stock, and the plaintiff in error establishing that fact in this case, which she did by offering to prove it and being refused, the irresistible conclusion is that she would have made good the same fact, when the District Court made the order, if she had been served with notice.

The court and assignee could stand no better than the directors and officers of the company before bankruptcy, and then no call for the payment of stock could have been made, except as instructed by a majority of the stockholders. Was not this the legal status of the parties and interests involved in this case when that order was made? The assignee occupied the place of the company, and he, speaking through the court, should have informed the stockholders, that the company wanted funds to meet its liabilities, and if the stockholders had neglected or refused to "*instruct*" the paying in of stock, then rightfully and equitably the court could and should have made the order. This process, it will be noticed, would have extended notice to all stockholders. We say the order was arbitrary, and the court had no power to make it. The court had no jurisdiction of Mrs. Sanger's rights, and could take none away from her nor impose any burdens upon her, without first, as a matter of plain right, allowing her to appear and *show cause.*

It stands that one half of the unpaid capital stock *might* have been sufficient to pay all the debts of the company; upon what rule of right, then, shall it be said that the court should not have given opportunity for ascertaining that fact, before entering up any order July 5th, and if such an opportunity had been afforded, it is not in the mouth of any one to say, that an order would not have been made at

that time entirely satisfactory to the plaintiff in error, as well as all the stockholders.

The order of July 5th is very similar to the assessment of a tax, and the offer of the plaintiff in error to show that the order was made for too much, was equivalent to showing irregularities in assessing taxes, and being refused such offer, gave the order all the effect of an absolute judgment to pay the assignee six thousand dollars; it will not be contended that such a judgment is valid, without service of personal notice.

It may be replied that all these things, if any existed, could be shown in defense of a suit to recover such stock so ordered to be paid, but that is the foundation stone of our complaint. We even desired the right to show such things in defense, and so, either error has been committed somewhere, or Mrs. Sanger is suffering from a remediless grievance. We feel confident, however, that this court can and will grant the relief asked.

The effect the court below gave the order renders it equivalent to an absolute judgment. We trust it needs no argument to satisfy your Honors that such a position is untenable, even in law, and much less so in a court of bankruptcy matters, or rather in a court reviewing the doings of such a court.

It is general practice for a court not to sit in judgment upon questions, the determination of which casts upon *persons* great, or even small liabilities, without first being assured of *personal* notice upon the party to be affected. In fact, this practice is as old as the law, and underlain with a principle of right as unchangeable as justice.

We hope we do not misconceive the bearing of this case, and if we do not, one thing is unmistakable, and it is, that judgment stands against the plaintiff in error for a much larger sum than in any event it ought to, and we think further that it is competent for this court to correct

the wrong in the way hereby asked, furnishing relief and meting out justice as the case demands.

Summary proceedings in collecting the assets of the bankrupt and adjusting adverse interests and rights, were properly checked and regulated by this court in *Smith* v. *Mason*, 14 Wallace, 419.

An order or judgment of court to be binding, or *res adjudicata*, must have the necessary condition precedent of the jurisdiction over the *person* against whom it operates.

Mrs. Sanger was a stranger to the whole proceeding, and is told, long after it is all over, that she is liable to pay $6,000 because of an order against her in her absence, and confessedly for more than, in any sense of law or equity, it ought to have been. This cannot be so. She is not bound by the order, and should be relieved from it.

Suppose the bankrupt owed only five thousand dollars, and its unpaid stock was $100,000, the proportion of Mrs. Sanger's stock necessary to be paid would indeed be very insignificant, and yet because without notice, a judge has said you must unnecessarily and unjustly pay the whole, must it be so? We leave it with this court to say.

A judgment against a party without notice of some kind, as provided by law, is void.

Railroad Company v. *Trimble*, 10 Wall, 367.
Kerr v. *Watts*, 6 Wh., 560.
Lenox v. *Notube*, Hemp., 251.

The court having jurisdiction of, and notice having reached the corporation, it does not follow that a stockholder had notice, or that the court had jurisdiction of a stockholder. This position is maintained in *Whitmore* v. *Cox*, 26 Me., 335; *Rand* v. *Proprietors, etc.*, 3 Day, 441; and in the 4th of Pick., 405, and 61 Ill., 472.

III.

If the position we have taken with relation to the order of July 5th, 1872, is sound, nothing further need be said in this case. The court instructed the jury that the only question for them to determine was whether or not Mrs. Sanger was a stockholder. The jury were told that she was estopped from denying the regular organization of the company, and that she was coucluded by the order of the District Court, requiring the balance of stock to be paid, and that she was a stockholder, and was liable. By this charge of the court it will be seen that Mrs. Sanger was prevented from making any defense whatever, as to the right of the district court to make that order. It will be remembered in this action, that she offered to show that no such amount was required to pay all the losses of the Great Western Insurance Company, as would be obtained by collecting the entire amount unpaid upon this stock. The practical effect of this instruction was to make Mrs. Sanger a surety for all her co-stockholders in said Insurance Company. It is no answer to this position to say that she might have reviewed the action of the District Court in making the order of July 5, 1872. She offered to show that she received no notice of any application for such an order, and that she received no notice that such an order had been made. The court denied her the privilege of showing this, and held that she was absolutely and forever concluded by this order. She could not have reviewed it without notice that such an order had been made. She not being a party to it, the court had no jurisdiction over her.

IV.

Assuming the facts to be as claimed by the defendant in error, and assuming further that the court had jurisdiction over Mrs. Sanger, in the order of July 5, 1872, we then

insist that it was error in the district court to direct a verdict against Mrs. Sanger in the manner they did. It clearly appears, (Rec. p. 29), that Mrs. Sanger never subscribed for any stock; she simply purchased a certificate of stock; she gave no agreement to pay anything further than what she paid at the time she purchased it. She entered into no contract with any one, except to exchange her land scrip for certificates of this stock. She had nothing whatever to do with the organization of the company. She never allowed her name to appear upon the books of the company. She never even filed her name into the certificates that were issued to her. She held these certificates without giving or incurring, as we claim, any liability to pay anything further. It cannot be claimed that she is liable on the ground of fraud, because she never directly or indirectly held out to creditors that she was a stockholder. She could not, therefore, be liable for any balance due the company.

Parmer v. *Ridge Mining Co.*, 34 Penn., 288.
Railroad Co. v. *Payne*, 17 Barbour, 567.
Railroad Co. v. *Kendall*, 31 Maine, 470.
Seymour v. *Sturges*, 26 N. Y., 134.

The court further erred in instructing the jury to allow interest from August 15, 1872.

V.

Judgment of Circuit Court.

The circuit court not only affirms the judgment of the district court, when the case was brought before it on a writ or error, but proceeded to render a new judgment for the amount of the judgment and costs in the district court, and interest on such judgment and costs.

By the judicial act of 1789, (Sec. 633, R. S. U. S.), final judgments in a district court "may be re-examined and

"reversed, or affirmed in a circuit court holden in the "same district, upon a writ of error," etc.

By the 24th section, it is provided that when a judgment is *reversed* in a circuit court, such court shall proceed to render such judgment as the district court should have rendered.

By section 636, R. S., it is enacted that the circuit court may affirm, modify, or reverse the judgment, decree, or order brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the inferior courts, as the justice of the case may require.

We see nothing in the laws of the United States to warrant this judgment. Nor, can it be claimed that there is anything in the laws or practice of the courts of Illinois to warrant the proceeding. The Supreme Court of Illinois sometimes affirms a judgment on a writ of error, and renders judgment for costs, but never proceeds to render a new judgment for the amount of the judgment and costs in the lower court, and interest thereon.

We respectfully submit, that the judgment of the circuit court should be reversed, and the court directed to reverse the judgment of the district court,

H. S. MONROE,

L. H. BISBEE,

Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

MARY C. SANGER,
Plaintiff in Error,

v.

CLARK W. UPTON, ASSIGNEE OF THE GREAT WESTERN INSURANCE COMPANY, A BANKRUPT,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR DEFENDANT IN ERROR.

L. H. BOUTELL,
Of Counsel for Defendant in Error.

JAMESON & MORSE, Printers, 162 & 164 Clark St., Chicago.

SUPREME COURT OF THE UNITED STATES.

MARY C. SANGER,
Plaintiff in Error,
v.
CLARK W. UPTON, ASSIGNEE OF THE GREAT WESTERN INSURANCE COMPANY, A BANKRUPT,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This is an action of assumpsit brought by Clark W. Upton, as assignee in bankruptcy of the Great Western Insurance Company, against Mary C. Sanger, as a stockholder in said company, for the balance unpaid on ~~his~~ her stock.

The charter of this company dated February 4th, 1857, fixed its capital stock at $100,000. Under the general insurance law of Illinois of March 11th, 1869, the company obtained the right on June 25th, 1870, to increase its capital stock to $5,000,000. Under this amended charter, it carried on a fire insurance business in Chicago, Illinois, till the great fire of October 8th & 9th, 1871. The losses sustained by reason of that fire rendered the company insolvent, but it undertook to continue its business till January 17th, 1872, when a petition in bankruptcy was filed against it in the United States District Court, for the Northern District of Illinois, on which petition it was adjudicated a bankrupt, February 6th, 1872. On the 11th day of April, 1872, said Upton was appointed the assignee in bankruptcy of said company.

Claims to the amount of about $800,000 were proved against the estate of said company. The assets of the company consisted for the most part of unpaid balances on its capital stock, which in most cases were eighty per cent. On the 5th day of July, 1872, on the representation of the assignee, the Bankruptcy Court made an order that the amount unpaid on said capital stock should be paid to the assignee on or before August 15th, 1872 and in default thereof, that the assignee proceed to collect the same, and that notice of said order be given to the stockholders by publication or otherwise. Notice of this order was accordingly given to the stockholders by publication and by mailing to each stockholder a copy of the order with a demand for payment.

Said Sanger having failed to pay the amount due on her stock, after such demand, in accordance with the terms of said order, this suit was commenced in said District Court. Said Sanger filed the plea of general issue, and on the trial the jury found for the assignee. The case was removed by said ~~Sanger~~ Sanger by writ of error to the Circuit Court of the United States for said district, when the judgment of the court below was affirmed. Whereupon it was removed by writ of error to this court.

POINTS.

I.

The District Court had authority to make the Assessment.

By the terms of the subscription and the stock certificate, it was provided that the unpaid eighty per cent. of the stock was to be paid on the call of the directors, when ordered by a vote of the majority of the stockholders. It is therefore insisted that this amount can only be collected in the way thus provided.

But upon the bankruptcy of this company, its corporate powers so far at least as they were necessary for the winding up of its affairs, were transferred to the Bankruptcy Court. The functions of its direct-

ors and stockholders were at an end. Its unpaid capital stock was a trust fund for the benefit of its creditors, and it was the duty of the Bankruptcy Court to collect it, and administer it. This being so, how can it be said that the Bankruptcy Court must resort to the machinery provided for a living corporation to collect the assets of a dead corporation.

In the first place, if the court had the power to compel these directors and stockholders, who are scattered from Michigan to Utah, to come together, and to act, their action would be purely mechanical They could do neither more nor less than to record the order of the court. This enforced action was not what the original contract between the company and the stockholders contemplated, and so far as that contract was concerned would be equivalent to no action at all.

But, in the next place, it is clear that the contract between the stockholders and the company must have been formed in subordination to the bankrupt law; and that the method provided for collecting the unpaid stock had reference only to the action of the company so long as it remained solvent.

Even if the company had remained solvent, and its stockholders had refused to make an assessment to meet its liabilities, a Court of Equity would have appointed a receiver, and ordered him to make and collect the needed assessment. A Court of Bankruptcy has at least the powers of a Court of Equity in collecting and administering assets.

II.

No notice to the Stockholders of the Application to the District Court for the Assessment was necessary.

1. It is claimed that the stockholders are not bound by the order of the District Court, because they were not parties nor privies in that proceeding. To give this objection any validity this order must be regarded as a judgment *in personam*. If it were so, may it not be said

that these stockholders were parties in the larger legal sense of that term as defined by Mr. Greenleaf, which includes "all who are directly interested in the subject matter, and had a right to make defense, or to control the proceedings, and to appeal from the judgment?"

1 Greenleaf on Ev. § 522–524.
Robbins v. *City of Chicago*, 4 Wal. 672.

2. It may be said, if they were parties in this larger sense, they did not have notice of the application for this assessment. As, however, a corporation is made up of its individual stockholders, when it is in bankruptcy its stockholders must be considered as before the court, so far at least as to be chargeable with notice of all proceedings therein affecting the company. If a notice to them of the application for this assessment was necessary, then notice to them of every action of the court affecting the property of the company would be also necessary.

3. The stockholders were, however, notified that the assessment had been made, and they had an opportunity to go before the District Court and ask that the order be rescinded or modified, and if this was refused them they had an appeal to the Circuit Court in the form of a petition for review. Every defense was thus open to them which they could have had if they had been notified of the application for the assessment. Having neglected to avail themselves of this opportunity they cannot complain that they have not had their day in court.

4. But there is no propriety in regarding this order as a judgment *in personam*. If it is to be regarded as a judgment at all, it was rather in the nature of a judgment *in rem*. The order was an order as to the *res* simply. It directed that certain property of the company, in whosesoever hands it might be, should be collected by the assignee, but it did not undertake to describe the holders of this property. In every suit brought for it the defendant might interpose every defense personal to himself, such as that he was not a stockholder, that he had paid for his stock, or that he had a legal set-off to the claim. The only

defense from which he was excluded was the one and only defense which was open to him in the Bankruptcy Court, namely, that the order called for more money than was necessary.

1 Greenleaf on Ev. § 525.

5. If there was anything in this last objection, the stockholders should have availed themselves of it before the Bankruptcy Court or the Circuit Court. But in making an assessment the question of more or less is one resting purely in the discretion of the court. It is impossible to tell in advance how much would be collectable, and if more was collected than was necessary, the excess would be refunded. So that if the stockholders had been deprived, as they were not, of the opportunity of making this objection, they would not have been deprived of a very valuable right, or have suffered any loss of property.

In support of these points I cite—

Ward v. *Griswold, Man. Co.* 16 Conn. 593.
Adler v. *Milwaukee Pat. Brick Man. Co.*, 13 Wis. 61.
Exparte Hewdry, 15 Ves. 498.
Ogilvie v. *Knox Co. Ins. Co.*, 22 How. 380.
Upton v. *Hansborough*, 3 Bissell, 417.
Bankrupt Act of 1867, § 1, 37.
Angell & Ames on Corp'ns, (9th ed.) 599–604.
1 Redfield on Railways, § 50.
Scammon v. *Kimball*, 4 Chicago Legal News, 284.
Sawyer v. *Hoag*, 17 Wal. 610, 619.
Hull v. *United States Ins. Co.*, 5 Gill (Md.) 484.
Pentz v. *Hawley*, 1 Barb. Ch. 122.
Pettibone v. *McGraw*, 4 Mich. 441.
Sagory v. *Dubois*, 3 Sanford Ch. 466.

III.

An Action at Law is the proper remedy for Recovering this Debt.

If the order of the District Court was valid, nothing remained to be done but for the plaintiff in error to pay the balance due on his stock on demand. Failing to do this, an action at law was the proper method of enforcing payment.

IV.

Interest.

If the order of the District Court was valid, there was an implied agreement on the part of the plaintiff in error to pay the amount due on his stock. His refusal to pay after demand was unreasonable, and interest was properly allowed from the time fixed by the court for payment.

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V.

A stockholder in a corporation de facto, when sued for the balance due on his stock, for the benefit of its creditors, cannot question the validity of the organization of the corporation, or its right to issue such stock.

Eaton vs. *Aspinswall*, 19 N. Y., 119.
In the matter of the Reciprocity Bank, 22 N. Y., 9.
Buffalo & Allegheny R. R. Co. vs. *Cleary*, 26 N. Y. 75.
Price vs. *R. I. & Alton R. R. Co.*, 21 Ill., 93.
Tarbell vs. *Page*, 24 Ills., 46.
Ramsey vs. *Peoria Marine & F. Ins. Co.*, 55 Ill., 311.
See also cases cited in *Upton* vs. *Hansbrough*, 3 Bissell 422, note 1.

L. H. BOUTELL,
Of Counsel for Deft. in Error.